

UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA

STATE OF TEXAS,	:	Docket No. CA 12-128
	:	
Plaintiff	:	
v.	:	
	:	
ERIC H. HOLDER, JR., in his	:	Washington, D.C.
Official Capacity as	:	Tuesday, July 10, 2012
Attorney General of the	:	P.M. SESSION
United States,	:	
	:	
Defendant, and	:	
	:	
ERIC KENNIE, et al.,	:	
	:	
Intervenor-Defendants	:	2:00 p.m.
.	:

TRANSCRIPT OF BENCH TRIAL
DAY 2 - P.M. SESSION
BEFORE THE HONORABLE DAVID S. TATEL
UNITED STATES CIRCUIT JUDGE
THE HONORABLE ROSEMARY M. COLLYER
THE HONORABLE ROBERT L. WILKINS
UNITED STATES DISTRICT JUDGES

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C O N T E N T S

<u>WITNESS:</u>	<u>DIRECT</u>	<u>CROSS</u>	<u>REDIRECT</u>	<u>RECROSS</u>
REP. TREY MARTINEZ FISCHER				
By Ms. Westfall	5	--	19	--
By Mr. Hughes	--	7	--	--
REP. RAFAEL ANCHIA				
By Ms. Berkower	20	--	45	--
By Mr. Hebert	37	--	--	--
By Mr. Garza	38	--	--	--
By Mr. Sweeten	--	39	--	--
J. MORGAN KROUSSER				
By Mr. Dellheim	48	--	118	--
By Mr. Hughes	--	81	--	--
By Mr. Hebert	--	--	121	--
VICTORIA RODRIGUEZ				
By Mr. Figueroa	123	--	--	--

E X H I B I T S

NUMBER:ADMITTED

(NO EXHIBITS MOVED INTO EVIDENCE.)

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P R O C E E D I N G S

JUDGE COLLYER: Whenever you're ready, ma'am.

MS. WESTFALL: Thank you.

**(REP. TREY MARTINEZ FISCHER, DEFENDANT witness, having been
previously duly sworn, testified as follows:)**

CONTINUED DIRECT EXAMINATION

BY MS. WESTFALL:

Q. Representative, I believe before lunch you were testifying about DPS offices and driver's license offices in San Antonio. Correct?

A. Yes, I was.

Q. Based on your participation in the legislative debate on Senate Bill 14, were bill supporters aware of the concerns that you had about the accessibility of those offices?

A. I think that was definitely made part of the debate, and it was certainly something that was brought up again in appropriations in terms of making sure -- every bill in the legislature has a fiscal note. So, in other words, if you're going to spend money, it will say so in the bill analysis. And in SB14, the fiscal note was for \$2,026,000, and \$2 million was HAVA money for voter education.

So in the fiscal note for Senate Bill 14, there were \$2,026,000 appropriated in the bill analysis. Two million was Help America Vote Act monies for voter education, to comport with the adjustments in the law, and \$26,000 was for web site

1 updates. There was no money or resources allocated to make sure
2 that these IDs not only were going to be accessible and free,
3 but that we were going to make the means more widely available
4 for people who can't get them.

5 Q. And was there any response at all to the concerns of bill
6 opponents that there would not be adequate access to driver's
7 license offices?

8 A. Well, the truth be told, there is actually precedent in our
9 House rules that say that fiscal notes don't have to be
10 accurate. They're sort of like our guesstimates. And then
11 secondly, I think that the budget had not been taken up at the
12 time of Senate Bill 14 because this was way ahead in the
13 priority scale.

14 And so if there was any discussion, it might have been
15 sort of deflections that we will get to that when we discuss
16 agency appropriations when we get to our budget, which we know
17 at the time, our budget was already minus \$27 billion to keep up
18 with existing services. So I would see this as a new service
19 that needed to be provided to a number of Texans who did not
20 have this ID. So I'm not sure that that could have been
21 absorbed with the existing agency resources.

22 Q. So were any steps taken at all to increase access to
23 driver's license offices?

24 A. The only thing I know, and it's just been through inquiry
25 with department officials and my colleagues, is that the

1 Department of Public Safety adjusted their hours of operation by
2 one hour on Tuesdays to close at 6 p.m.

3 Q. Thank you.

4 MS. WESTFALL: I have no further questions at this
5 time.

6 THE COURT: Thank you. I'm sorry, I didn't realize how
7 close to the end you were.

8 MS. WESTFALL: That's okay. I was going to raise it
9 with you, but I decided that you needed to eat lunch.

10 JUDGE COLLYER: That's very kind.

11 MR. HUGHES: Your Honor, if you'll just bear with me
12 while I set up my computer.

13 JUDGE COLLYER: Yes, sir.

14 MR. HUGHES: You would think I hadn't practiced that
15 right before lunch. Your Honor, John Hughes for the State of
16 Texas. It's my first time to speak at this trial, and it's nice
17 to be back before Your Honor.

18 JUDGE COLLYER: Thank you, sir. Nice to see you too.
19 Go right ahead.

20 MR. HUGHES: May I proceed?

21 JUDGE COLLYER: Please.

22 **CROSS-EXAMINATION**

23 BY MR. HUGHES:

24 Q. Good afternoon, Representative Martinez Fischer.

25 A. Good afternoon.

1 Q. We met right before lunch. I'm John Hughes. I represent
2 the State of Texas. I've just got a few questions for you.

3 A. Sure.

4 Q. The first, I just want to make sure we're clear, you've been
5 out spoken here today about criticism of Senate Bill 14,
6 including your concern it could disenfranchise minority voters.
7 Right?

8 A. Yes, sir.

9 Q. And you've also talked about the difficulty of getting to
10 DPS, getting a driver's license in the San Antonio area where
11 you live. Right?

12 A. Yes.

13 Q. And as you've indicated, you've shared your thoughts and
14 concerns about SB14 and access to DPS and getting a driver's
15 license, you shared those during the legislative debates on
16 SB14. Right?

17 A. I think what I said is that upon making inquiry about
18 resources, most of that discussion was deflected towards the
19 budget. A lot of the fact finding that I did was after passage
20 of the bill, just in terms of talking as this issue has been
21 before us, as whether it would be reporter inquiries, or
22 speaking at conferences and policy convenings, and responding to
23 requests for interview by members of the media. I had to learn
24 a lot more about the implications of this law as it heads
25 towards preclearance.

1 Q. And that was kind of where I was going. You were an
2 outspoken critic of SB14 during the legislative process. Right?

3 A. To characterize it as being a critic, I thought I was
4 representing my District, so I was advocating. If it was
5 critical, I apologize.

6 Q. I didn't mean to put a negative connotation on it, sir. You
7 opposed SB14 and made remarks in opposition to it during the
8 legislative process. Right?

9 A. That is correct.

10 Q. Just like you've made remarks today critical or in
11 opposition to SB14. Right?

12 A. That's right.

13 Q. And as you alluded to, you've also made remarks in the media
14 that have been in opposition to and talk about the consequences
15 of SB14. Right?

16 A. Yes.

17 Q. Okay. And I would like to talk to you a little bit about
18 that. In fact, you appeared on television with
19 Representative Aliseda in March of 2011 to talk about SB14.
20 Right?

21 A. Yes.

22 Q. And you appeared on, I think it was -- is it KXAN? Is that
23 the San Antonio TV station?

24 A. That's not -- doesn't sound familiar for San Antonio. That
25 may be Austin.

1 Q. I'm sorry, Austin. Is that the TV station you recall
2 appearing on in March of 2011?

3 A. I don't recall appearing on it, but I've done a lot of
4 interviews and there is a KXAN in Austin.

5 Q. Let me just show you something that might refresh your
6 memory.

7 A. Sure.

8 Q. And it's not this. And you see here we've got a YouTube
9 screen-grab talking about yourself and Representative Aliseda?

10 A. I certainly see him.

11 Q. Yeah, and you see your name there. Right?

12 A. I do.

13 Q. And you see that the KXAN uploaded this March 27, 2011. You
14 see that?

15 A. Yes.

16 Q. And your name is right there. Right?

17 A. It is.

18 Q. And I would like to just show you about five seconds of
19 that, and then ask you some questions. Okay?

20 A. Sure.

21 Q. All right.

22 (Videotape played in open court.)

23 Q. So there in March 2011, on TV in Austin, KXAN, your
24 statement was, "If a driver's license required under SB14, that
25 could be a problem for your mother because," your statement was,

1 "she didn't have a driver's license." Right?

2 A. That's what I said.

3 Q. Okay. And then we don't need to watch the whole video, but
4 I think you went on to explain in your remarks that she is
5 elderly and didn't drive at the time, so it wouldn't make sense
6 for her to have a driver's license. Right?

7 A. Yes.

8 Q. Okay. And then, I think, fast forwarding to this year,
9 April 2012, you participated in a national teleconference
10 sponsored by the Brennan Center concerning voter ID. Right?

11 A. I did.

12 Q. You had a number of media outlets called into that, and you
13 spoke about your concerns about the implications of
14 Senate Bill 14. Right?

15 A. Right.

16 Q. And I would like to show you some of the things that were
17 attributed to you, and I will show you what we've marked, I
18 think, it's Exhibit 506 for references purposes, and I'll blow
19 it up so you can see it.

20 You see here on Exhibit 506 it says, "Representative
21 Trey Martinez Fischer of San Antonio, Texas says his elderly
22 mother could be become one of millions of Americans likely to be
23 barred from participating in this year's voting process because
24 of newly enacted voter suppression legislation." Do you see
25 that?

1 A. I do.

2 Q. Do you recall giving remarks to that effect at the
3 Brennan Center sponsored national teleconference in April of
4 this year?

5 A. Yes.

6 Q. And in fact, you went on to say that she's got no driver's
7 license, no passport, no concealed handgun license, the only
8 forms of voter identification under Texas Senate Bill 14. Then
9 you say that she would be shut out, and there you mean shut out
10 of the electoral process. Right?

11 A. Correct.

12 Q. And this was reported here which, I think, is in the
13 politics and governance of the New America media web site, but
14 it was also reported elsewhere in the media. Correct?

15 A. I believe so.

16 Q. And I would like to show you one example of that from the
17 *Texas Tribune*, and we've marked this one Exhibit 509. And
18 again, this is in April of 2012, and I've highlighted from the
19 *Texas Tribune* talking about this Brennan Center call that you
20 participated in. Do you see that?

21 A. I do.

22 Q. And flipping to the second page, again, at least it's
23 attributed to you in this report that you said during that call
24 that you believed the law will disenfranchise many voters. Did
25 you say that in the call?

1 A. I'm sure I did.

2 Q. And as kind of anecdotal evidence in support of that
3 statement, you said that your mother would be an example of
4 someone who would be disenfranchised under Senate Bill 14.
5 Right?

6 A. Right.

7 Q. And, you know, you've taken time to familiarize yourself
8 with kind of the debate over voter ID generally, and have
9 educated yourself so you can talk knowledgeably to the media
10 about these issues. Right?

11 A. I try.

12 Q. And have you noticed in doing that, when you read media
13 accounts that are accounting kind of opponents of voter ID, that
14 there's frequently kind of an anecdotal story identifying
15 somebody who is going to be shut out of the process because they
16 don't have ID. Have you seen that in some other media accounts?

17 A. I've seen that on both sides of the debate, yes.

18 Q. Anecdotal evidence is often put forward in some of these
19 news accounts. Right?

20 A. Yes.

21 Q. After the April 2012 Brennan Center conference, we'll fast
22 forward to June of 2012, when you gave a deposition in this
23 case. Right?

24 A. I did.

25 Q. And during that deposition, when you were questioned by an

1 attorney from the State of Texas who could check to see whether
2 your mother had a driver's license, you admitted or explained in
3 that deposition that she did, in fact, have a driver's license.
4 Right?

5 A. Yes.

6 Q. Okay. And you didn't issue a press release at that time
7 correcting your prior statements. Right?

8 A. I did not.

9 Q. And you didn't call KXAN to correct the false statement that
10 appeared on TV there. Right?

11 A. I did not.

12 Q. And you did not call the Brennan Center or any of the news
13 outlets that reported the anecdotal evidence that you offered on
14 the Brennan Center call to correct the false statement. Right?

15 A. I did not.

16 Q. And in your deposition, you explained that you thought that
17 your mother's driver's license would be expiring in the very
18 near future. Right?

19 A. Yes.

20 Q. And that you have no compelling reason for her to renew it
21 because her doctor would have a problem with it and she hasn't
22 driven in years. Right?

23 A. Two years, I think I said.

24 Q. Okay. And those same concerns about not driving and the
25 doctor would have existed at the time you appeared on TV and

1 said she didn't have a license in March 2011. Right?

2 A. Yes.

3 Q. Okay. And before you swore under oath that that license was
4 about to expire, did you do -- what did you do to check to see
5 if that would be accurate?

6 A. Well, to be clear, my mother has Parkinson's disease, and
7 she is my mother and I'm very protective of my mother, as I'm
8 sure you are of yours. So I had every reason to believe the
9 fact that she's not driving, and the reason why I know that is
10 because I bought her a car that sits in the driveway, and the
11 reason why I know that is because members who work in my law
12 office take her to and from every place she needs to go.

13 And so I, in my mind, believed that she did not have a
14 driver's license. In my mind, I believed that when she applied
15 for her disabled placard for her vehicle, that they were made
16 aware of her medical condition, and I did not know until I asked
17 my mom to see her wallet. Now, one of the things with a very
18 independent 73-year-old mother is, you don't get into her purse
19 without asking her. I never had done it.

20 And so when I learned that her license was still active
21 and not being used, I corrected myself. I didn't feel like I
22 had made this intentional omission. I felt it's my mother, I
23 have the right to talk about my mother; I think if anyone should
24 be upset, it should be her, because I mischaracterized the fact
25 she didn't have a driver's license.

1 But the fact remains that she does not have a concealed
2 handgun license. That I know. The fact remains that she does
3 not have a passport. The fact remains that she doesn't have a
4 national birth certificate, and the fact remains that she
5 doesn't have a military ID. So when that license expires,
6 because we are not going to misrepresent her ability to drive
7 before the Department of Public Safety, I don't know what my
8 mother is going to do should SB14 preclear.

9 Q. Let me just make sure a couple of things we agree on. You
10 didn't check to see whether your mother had a driver's license
11 before you went on TV and said she didn't, and talked to the
12 Brennan Center on the national teleconference. You only checked
13 before you had to give sworn testimony in this case. Right?

14 A. That's not correct.

15 MR. GARZA: Objection. The witness has answered that
16 question, Your Honor.

17 THE COURT: Well, this is cross-examination, so I will
18 let the question be asked, although I think we have the
19 testimony. So you can ask your question and then proceed.
20 Okay?

21 A. To be clear, not remembering the exact date that I asked my
22 mother, it wasn't in anticipation of a deposition under oath.
23 It came up in the course of conversation, I would imagine
24 looking at this chronology, sometime between April of 2011 and
25 the time I took a deposition.

1 BY MR. HUGHES:

2 Q. And in the deposition you said you thought your mom's
3 driver's license would expire in the very near future, and my
4 very specific question is, what did you do to check that
5 statement?

6 A. Oh, I asked my mom about her driver's license, and I looked
7 at her license.

8 Q. Okay. When does it expire?

9 A. I know it's active now, and I'm going to guess, but I think
10 it's going to expire sometime in 2014, 2015, something like
11 that.

12 Q. Okay. If the official records of Texas show that it will
13 not expire until 2017, you wouldn't have any reason to dispute
14 that. Right?

15 A. Absolutely. I'm guessing right now, so whatever the record
16 says is what the record says.

17 Q. And if the official records of Texas say that she actually
18 renewed that license in August of 2011, after you went on TV and
19 said she was no longer driving, which I'm not disputing that
20 she's not driving, but if the official records show that she
21 renewed it in 2011, you have no reason to dispute that. Right?

22 A. Absolutely not.

23 Q. And just so the record is clear, what is your mother's name?

24 A. Her name is Guadeloupe.

25 Q. And Martinez Fischer. Right?

1 A. Yes. I don't know if that's on her license, but yes.

2 Q. And date of birth?

3 A. July 28th.

4 JUDGE COLLYER: We don't really need that here.

5 MR. HUGHES: I would just like to show him --

6 JUDGE COLLYER: What I would like you to do is show him
7 a document and have him agree that yes, that document contains
8 his mother's correct date of birth. But we don't need it in the
9 transcript, because then you'll have to go back and find it and
10 redact it. I'm helping you.

11 MR. HUGHES: Thank you, Your Honor. I do appreciate
12 the help. I was not mindful of that. So I've now...

13 JUDGE COLLYER: Yes. You see, I'm helping you, so just
14 say, "Does this look accurate?" And he can say, "Why, yes, that
15 looks accurate."

16 MR. HUGHES: Thank you, Your Honor.

17 BY MR. HUGHES:

18 Q. Representative Martinez Fischer, I believe I've put before
19 you on the screen what we've marked Exhibit 700 for
20 identification purposes, and this is the official state records
21 concerning your mother's -- both her renewal and expiration date
22 of her driver's license. Does that look accurate to you?

23 A. That appears accurate, yes.

24 Q. Just so we're clear, it shows that she renewed it. The date
25 it was last issued was August 18, 2011. Right?

1 A. That's what it says, yes.

2 Q. And even though she was no longer driving, she went ahead
3 and renewed her license. Right?

4 A. That's what it appears, yes.

5 Q. And that's because people need driver's licenses to do all
6 sorts of things in our society besides just drive. Right?

7 A. That's one way of looking at it, yes.

8 MR. HUGHES: No further questions.

9 JUDGE COLLYER: All right. Thank you, Mr. Hughes. Is
10 there any redirect?

11 MR. GARZA: No redirect, Your Honor.

12 JUDGE COLLYER: All right, then. Thank you very much,
13 sir.

14 MS. WESTFALL: May I?

15 JUDGE COLLYER: Oh, there is redirect.

16 THE WITNESS: I'm sorry.

17 JUDGE COLLYER: I am sorry. I excused you.

18 MS. WESTFALL: My apologies. I just have one question.

19 **REDIRECT EXAMINATION**

20 BY MS. WESTFALL:

21 Q. Representative, do you recall any evidence presented during
22 the debate on the Senate Bill 14, other than anecdotal evidence,
23 that in-person voter fraud is a problem in Texas?

24 A. Mostly anecdotal evidence, and mostly we need this because
25 we can't catch people because we don't know they're doing it.

1 MS. WESTFALL: Thank you. I have no further questions.

2 JUDGE COLLYER: Thank you. Is there any other
3 redirect? Now you're excused.

4 THE WITNESS: Thank you, Judge.

5 JUDGE COLLYER: All right. Do the defendants have
6 another witness to call?

7 MS. BERKOWER: Yes, we do, Your Honor.

8 JUDGE COLLYER: Can you introduce yourself?

9 MS. BERKOWER: Yes, ma'am. My name is Risa Berkower
10 and I represent the Attorney General, Eric Holder, in this case.
11 And the Attorney General would like to call Texas House
12 Representative Rafael Anchia.

13 (Oath administered by Courtroom Clerk.)

14 MS. BERKOWER: Your Honor, may I proceed?

15 JUDGE COLLYER: Yes, please do.

16 **(REP. RAFAEL ANCHIA, DEFENDANT witness, having been duly sworn,**
17 **testified as follows:)**

18 **DIRECT EXAMINATION**

19 BY MS. BERKOWER:

20 Q. Could you please state your name for the record?

21 A. Rafael Michael Anchia.

22 Q. Have you ever been a member of any Latino organizations?

23 A. Yes, I'm past chair of the National Association of Latino
24 Elected Officials Education Fund; I'm also a member of the
25 Mexican American Legislative Caucus in Texas.

1 Q. Are you currently a member of the Texas House?

2 A. I am.

3 Q. Which district do you represent?

4 A. I represent District 103.

5 Q. How long have you been a House member?

6 A. I was elected in 2004 and began my service in January of
7 2005.

8 Q. Where is your district located?

9 A. District 103 is the western corridor of Dallas County and
10 includes portions of the cities of Dallas, Irving,
11 Farmers Branch and Carrollton.

12 Q. What percentage of your constituents are Hispanic?

13 A. Approximately 70 percent.

14 Q. And what percentage of your constituents are
15 African-American?

16 A. Well, the black and Hispanic percentages of District 103
17 under the old redistricting map and the new redistricting map
18 are both over 80 percent.

19 Q. Do you believe that it's important to understand the racial
20 demographics of your constituents?

21 A. I do. I think it's important in representing a community
22 that you understand cultural differences, language differences,
23 country of origin differences. All those I think are important
24 characteristics of a community and the more that one understands
25 about them, the better representative one can be.

1 Q. What are the poverty rates in your District?

2 A. Poverty rates are very high. During the last decennial
3 census, the per capita income of the residents of District 103
4 was about \$13,500. And to put that in context, the state
5 average per capita income was about \$20,500. So in light of the
6 fact that Dallas is one of the wealthiest places in the state, I
7 represented some of the persons on the lowest rung of the
8 socioeconomic ladder in one of the wealthiest places in the
9 state.

10 Q. Have you ever served on the House Elections Committee?

11 A. I have.

12 Q. When were you on that committee?

13 A. I was in 2005, 2007, and 2009.

14 Q. During your time in the legislature, has the House
15 considered voter identify legislation?

16 A. Yes, during each session that I have served in the
17 legislature there has been a photo identification bill that has
18 moved through the process.

19 Q. Did you attend the House hearings for each of these bills?

20 A. I did.

21 Q. Were you absent for any?

22 A. I might have been, but I don't think so.

23 Q. In 2011, you said you were not on the Elections Committee.

24 Did you attend any hearings on voter identification legislation
25 that session?

1 A. To be clear, I was neither on the Elections Committee nor on
2 the Select Committee that was established for the purposes of
3 hearing Senate Bill 14. I was on neither of the committees.
4 But I did sit in at the invitation of the chair, which was an
5 open invitation to all members and typically a courtesy afforded
6 to members of the legislature. I did sit in on the first public
7 hearing related to the Senate Bill 14.

8 Q. When you say "the first public hearing," did that committee
9 hold any other hearings?

10 A. I think after the point of order, there was a very brief
11 hearing. After the point of order was sustained and the bill
12 was recommitted, I believe, there was a brief hearing, and I
13 don't think I attended that one since it was just for purposes
14 of voting the bill out. I don't think any public testimony was
15 taken.

16 Q. Were you involved with any interim committees or
17 subcommittees that addressed voter identification issues?

18 A. I was a member of the Elections Committee in 2005, 2007, and
19 2009. I also participated in interim charges, so that means
20 studying the issue of photo identification, voter impersonation,
21 voter fraud generally.

22 Q. Between 2005 and 2011, when the House considered voter
23 identification bills, has the public justification given for the
24 bills always been the same?

25 A. No, I consider that the public justification has changed

1 over time. Initially, when we began talking about photo ID in
2 the legislature, there were general discussions about the voter
3 fraud, and examples were given about different types of voter
4 fraud, and I think it was suggested publicly that voter fraud
5 was an epidemic in the State of Texas.

6 When we drilled down a little bit deeper through public
7 debate, committee hearing, the review of scholarly publications,
8 we realized photo ID is just designed to deal with one type of
9 voter fraud and that's in-person impersonation at the polling
10 location. So then the discussion changed from a general matter
11 of voter fraud to simply voter impersonation.

12 And then, when we drilled a little bit further in
13 subsequent sessions, we realized that the incidents of voter
14 impersonation was rare, and then after that, there was a subtle
15 confluence of the discussion of voter impersonation at the polls
16 with other issues.

17 Q. Just to be clear, when you said -- when you were describing
18 the initial justifications for the bill, what time period are
19 you talking about?

20 A. 2005 was the first time that a photo ID bill was offered in
21 the legislature that was contemporaneous with my service in the
22 legislature. So I recall that 2005 was the first session that
23 we saw a photo ID bill.

24 Q. And you said that there was hearings concerning voter fraud
25 around that time period. Can you be more specific? Around that

1 time period, what were the conclusions of the evidence -- what
2 was the evidence that you learned during those hearings?

3 A. Well, the conclusions were that voter fraud, in fact, did
4 occur in the State of Texas, but it was almost exclusively -- I
5 shouldn't say exclusively, but a great percentage of that voter
6 fraud involved mail-in ballots. And there were claims of
7 official oppression, there were concerns about collusion with
8 election officials. So there were a number of cases of voter
9 fraud generally. There was bribery.

10 But when we drilled down into the data, we found that
11 voter impersonation was actually a very small percentage of all
12 the cases. And in fact, it wasn't until later on that we
13 actually found documented cases of in-person impersonation at
14 the polls.

15 Q. You said that the justifications for voter fraud changed
16 over time. After 2005, what was the next stage?

17 A. Well, 2005 into 2007, there was a confluence of the issue of
18 voter impersonation and photo ID with issues related to
19 noncitizen voting. And there was a connotation that there were
20 large numbers of undocumented persons voting in Texas elections.
21 And we looked into this issue as well. And after taking
22 testimony in committee, actually having a subcommittee dedicated
23 to the incidents of noncitizen voting and mail-in ballot fraud,
24 we were able to determine that it occurred in very small numbers
25 in the State of Texas.

1 And after the 2007 session and going into 2009 and
2 beyond, the justification for the bill moved from impersonation,
3 then on to noncitizen voting - illegal immigrant voting,
4 essentially - and then became about the integrity of elections
5 and preventing the disenfranchisement of validly cast votes by
6 avoiding invalidly cast votes.

7 Q. So you said that justification arose during the 2009
8 session, or around that time?

9 A. Around 2009 in 2011, you start to hear a lot less of the
10 illegal aliens voting and more of integrity of elections.

11 Q. Did the House examine whether voter ID would preserve the
12 integrity of elections?

13 A. Not as far as I can tell. I mean, the House took a lot of
14 testimony, to be clear. The thing about photo ID that I always
15 found interesting that was offered up by proponents was that
16 this was some failsafe mechanism for preventing voter
17 impersonation at the polls.

18 And I recall in one committee hearing, and I don't
19 remember which one, we had the Department of Public Safety of
20 the State of Texas come in and bring in a bunch of fake IDs,
21 fake Texas identifications. We asked the members of the
22 committee if they could discern which ones were real and which
23 ones were fake, and it was interesting. There were many IDs
24 that had been picked up by DPS that were actually quite real
25 looking. And we wondered aloud if, in fact, a photo ID

1 requirement, even when you did have a valid driver's license in
2 front of you, would prevent impersonation to the extent it did
3 exist.

4 So there was always a question in my mind about whether
5 or not photo ID was as ironclad and fail safe as members -- the
6 proponents suggested.

7 Q. Following the evidence that you heard in 2009, did the
8 justifications for voter ID shift again in 2011?

9 A. Well, towards the end of 2011, I recall having a dialogue
10 with the bill author on the House Floor about the justification,
11 and I was asking her about voter impersonation, and she
12 responded, "This isn't about voter impersonation, this is about
13 the integrity of elections." And I think she said, "I believe
14 in my heart that turnout will increase."

15 So I think it became a new justification in that this
16 bill would increase voter confidence, and therefore, voter
17 turnout would increase. So it was being offered, I think at
18 that point, as a way to expand the franchise, which I did not
19 believe and I did not agree with.

20 Q. During House consideration of SB14, what evidence, if any,
21 was presented that the bill would increase voter confidence?

22 A. I think there were allusions to Indiana, and a comparison
23 was made between turnout numbers among minority populations in
24 Indiana, between the 2006 or 2008. So they took off-year
25 election numbers and then presidential election numbers and

1 compared them and said, "Hey, look, African-American turnout
2 went up." I thought it might be a coincidence that we had an
3 African-American candidate for president at the time, and maybe
4 that was the reason that turnout went up.

5 It was also important to note that Indiana was an
6 important battleground state in 2008, so you had significant
7 resources spent at that time. I believe that that was the
8 reason for turnout going up, and not the existence of a photo ID
9 requirement.

10 Q. Did the House hear any evidence that voter turnout or voter
11 confidence would increase in Texas?

12 A. No.

13 Q. During House consideration of SB14, what evidence, if any,
14 was presented that the bill would ensure ballot integrity?

15 A. I'm not sure. None comes to mind. But I know a lot of
16 people talked about it and said it affirmatively. But I don't
17 recall any studies, for example, by the Department of Public
18 Safety or by the Secretary of State's office that suggested it
19 would increase ballot integrity.

20 Q. During House consideration of SB14, what concerns were
21 raised about the impact of the bill on minority voters?

22 A. Members of the Mexican American Legislative Caucus and the
23 Black Caucus talked both in committee, in public, and on the
24 House Floor about the potential adverse impact of SB14 on
25 minority communities; the difficulties in getting the ID that it

1 takes to get photo ID, the availability of DPS stations, budget
2 cuts to DPS. All of those issues that you've heard earlier
3 today were articulated often by minority members of the
4 legislature.

5 Q. Were you one of those members --

6 A. I was.

7 Q. -- who articulated?

8 A. Yes.

9 Q. Do you believe your concerns were taken seriously and your
10 concerns addressed?

11 MR. SWEETEN: Objection. Calls for speculation,
12 Your Honor.

13 JUDGE COLLYER: No, it wouldn't be speculation as to
14 whether he believes it or not. I'm not sure that his belief,
15 called belief, is relevant, but you might reframe the question
16 as to what happened that -- you know, was there a response or
17 something more like that.

18 BY MS. BERKOWER:

19 Q. How did bill supporters respond to the concerns raised?

20 A. I felt that we were allowed to ask questions, offer up
21 amendments, but I never felt like that there was truly a
22 collaborative approach to taking into account our concerns. In
23 fact, at different times during the Floor debate the bill
24 sponsor was, I believe, intentionally evasive and refused to
25 answer questions from -- certainly from me and from other

1 members of the Mexican American Legislative Caucus, about the
2 bill itself. And there were other instances where there was
3 very little debate on amendment's that we brought up and they
4 were summarily tabled.

5 Q. Was there a time when the House considered amendments to
6 SB14?

7 A. Yes.

8 MS. BERKOWER: Could we please have JA 002151, please?
9 And could you expand the bottom half of the page, starting with
10 Amendment No. 58, please?

11 BY MS. BERKOWER:

12 Q. Representative Anchia, do you recall introducing
13 Amendment 58 to SB14?

14 A. Yes.

15 Q. What would this amendment have done?

16 A. If I'm reading it correctly, it would have delayed
17 implementation of SB14 until such time as the Secretary of State
18 completed a study that was segregated by race and ethnicity and
19 county related to access to photo identification, with a focus
20 on minority populations.

21 So it didn't impact the underlying bill, necessarily,
22 the effectiveness of the bill, it just merely delayed it until
23 such time as the study was conducted by the Secretary of State's
24 office.

25 Q. And what was the purpose of conducting that study?

1 A. Well, to that date it did not appear that any study had been
2 conducted by the chief elections officer, who is the Texas
3 Secretary of State, related to the availability and the
4 penetration of these newly required documents among Hispanic or
5 African-American populations. And we had spent a lot of time
6 taking testimony on the fact that there is maybe lower
7 penetration in minority populations with respect to the
8 documents -- the photo identification documents that were being
9 requested in the bill, so we wanted to make sure we had it
10 right. After all, we were dealing with voting rights, and these
11 are protected classes under the Voting Rights Act, so we wanted
12 to make sure that the chief elections officer at least gave us
13 the data so that we knew if any problems would exist.

14 Q. And would this amendment have proposed any changes at all to
15 SB14's identification requirements?

16 A. No.

17 Q. What happened to this amendment?

18 A. I believe this amendment was tabled.

19 MS. BERKOWER: Could we have JA 2099, please? Could
20 you, again, expand the second half of the page, starting with
21 amendment Number 15, please?

22 BY MS. BERKOWER:

23 Q. Do you remember Amendment 15, Representative?

24 A. I do.

25 Q. What would this amendment have done?

1 A. This amendment, by Representative Martinez, suggests that if
2 people were obtaining documents, and it takes ID to get ID - and
3 I think that's what this amendment was getting at - that if it
4 took ID to get ID in order to vote, that those forms of
5 identification would be free of charge to the person requesting
6 them. Because while a free ID was available under the bill, we
7 were concerned that there were charges for the underlying
8 documents, including birth certificates, which, I believe in the
9 State of Texas cost \$22. So we wanted to get at that with -- I
10 think Representative Martinez wanted to get at that with this
11 amendment.

12 Q. Would this amendment have changed SB14's identification
13 requirements?

14 A. No.

15 Q. What happened to this amendment?

16 A. This amendment was tabled.

17 JUDGE TATEL: Do you know why it was tabled?

18 THE WITNESS: I do not.

19 JUDGE TATEL: Could it have been because the members of
20 the legislature were worried about the cost?

21 THE WITNESS: It is possible. I don't recall the
22 articulated reason.

23 JUDGE TATEL: When an amendment is tabled, is there
24 debate, or could we look at the debate and find out the answer
25 to that question?

1 THE WITNESS: Yes, Your Honor, there is often debate on
2 these issues, but I do not recall what Representative Harless
3 argued when she made the motion to table the amendment.

4 BY MS. BERKOWER:

5 Q. At the time the House voted on SB14, how many of the
6 questions raised about the Bill's negative impact on minority
7 voters, if any, had been answered by bill supporters?

8 A. I spent a lot of time on the back microphone asking the
9 House bill sponsor questions about how the bill was going to
10 impact minority populations. And to give some further context,
11 on the Texas House there's a front microphone where a bill
12 author or sponsor lays out and explains a bill or amendments,
13 and there's a back microphone where questions are asked.

14 So I spent a lot of time on the back microphone with
15 the bill's House sponsor, Patricia Harless, asking her about any
16 studies that she was aware of related to how this bill would
17 impact protected classes in the State of Texas. And after
18 asking many times, maybe up to six, seven, or eight times, I
19 don't know that I ever got a clear answer. Either the bill
20 sponsor did not know or did not want to answer.

21 Q. In the face of these types of unanswered questions, how many
22 House members who supported the bill changed their decision to
23 vote in favor of SB14?

24 A. I'm not aware of any.

25 Q. Representative, you testified that there's a high rate of

1 poverty in your district. How many of your constituents depend
2 on public transportation because they don't own cars?

3 A. I don't have exact figures on that, but I suspect there are
4 fairly high percentages of persons who do not have automobiles,
5 rely on Dallas Area Rapid Transit, which offers bus service, van
6 service, and also commuter rail service.

7 Q. Is there a sizable portion of your constituents who hold
8 hourly wage jobs?

9 A. Yes.

10 Q. How will SB14's requirements impact your constituents?

11 A. Well, I think it will -- to the extent that there is a lower
12 penetration rate of valid passports, photo identification,
13 concealed handgun licenses among the low socioeconomic status
14 constituents that I represent - specifically African-Americans
15 and Latinos, they comprise about 80 percent of the district - I
16 think it will have a significant impact. You've got the cost
17 involved in getting underlying documents, then you have the time
18 and effort that it takes to leave work, potentially put your
19 children in child care, hop on a bus, hop on a train, get to
20 different DPS offices, wait in line, and then try to receive
21 your ID.

22 This is time consuming, it can be cumbersome, it can be
23 expensive because you've got to make a financial decision to
24 leave an hourly wage job to pay the money to get underlying
25 documents, and then you've got the expense of actually getting

1 somewhere. So I think it can create a significant hardship.

2 Q. Would an unexpected expense of \$22 be a burden to your
3 constituents?

4 A. I imagine for many at the lowest rung of the socioeconomic
5 ladder in the district that I represent, it would be.

6 Q. Representative Anchia, why is this issue important to you?

7 A. It's important to me for a number of reasons. I'm a son of
8 emigrants to this country. My mother is from Mexico and my
9 father is from Northern Spain. My father is the son of a sheep
10 herder, and they came to this country for a better life. My
11 mother is a public schoolteacher and always taught her children,
12 who are both lawyers, that civic engagement was important. I
13 think that's one of the reasons I'm engaged in public service
14 today.

15 So when we're talking about civic engagement in a
16 foundation, civic engagement is voting and potentially abridging
17 those rights, we need to balance the access to the franchise
18 with ballot security. And I've said often, and I said it on the
19 House Floor and it's available in the tape, that I think there
20 is a photo ID regime out there for the State of Texas out there
21 that might work, but SB14 is not it. The list is entirely too
22 small for available documents, and there's no vote-saving
23 mechanism.

24 So I take it pretty seriously, and I've tried to spend
25 a lot of time focusing on this bill. I fear it's going to

1 disenfranchise a lot of people.

2 MS. BERKOWER: No further questions at this time,
3 Your Honor.

4 JUDGE TATEL: I just have one question.
5 Representative, do you know whether -- if someone doesn't have a
6 driver's license and they want to get an EIC, can they get the
7 birth certificate and the EIC in the same trip, do you know? Do
8 you go to the same place to get them?

9 THE WITNESS: I don't believe you do. I think you
10 would have to go to the county to get your birth certificate, or
11 you could get it through the Texas Bureau of Vital Statistics at
12 the state level, and then you would have to get your EIC at a
13 Department of Public Safety office. That's my understanding of
14 how the system would work.

15 MR. HEBERT: I'm Gerald Hebert for the Kennie
16 intervenors. I just have one minute of questions.

17 JUDGE COLLYER: Mr. Hebert, Judge Tatel has asked me to
18 ask counsel to identify their clients and their law firm.
19 You've identified your clients, and who is your law firm?

20 MR. HEBERT: My law firm is the firm of J. Gerald
21 Hebert, PC. I'm a sole practitioner.

22 JUDGE COLLYER: Isn't that amazing?

23 MR. HEBERT: And my co-counsel is Mr. Chad Dunn, and he
24 is of the law firm of Brazil & Dunn in Houston, Texas.

25 JUDGE COLLYER: Mr. Hebert, it's nice to see you again.

1 Go ahead.

2 **DIRECT EXAMINATION**

3 BY MR. HEBERT:

4 Q. Representative Anchia, just a minute of questions here. The
5 City of Arlington, Texas, is just to the west of your district.
6 Correct?

7 A. Yes, sir.

8 Q. And isn't that true that the City of Arlington, Texas, is
9 the largest urban municipality in the United States without a
10 public transportation system?

11 A. That's my understanding.

12 Q. And many of the constituents in Arlington, Tarrant County,
13 right next door, and in Dallas County who can't afford a car or
14 don't own a car rely heavily on public transportation when it's
15 available. Isn't that true?

16 A. Yes.

17 MR. SWEETEN: Your Honor, I'm going to object to the
18 leading nature of the questions that are being posed.

19 JUDGE COLLYER: Right. This isn't cross-examination
20 so...

21 MR. HEBERT: Right.

22 BY MR. HEBERT:

23 Q. Do you know how many DPS offices are in Tarrant County?

24 A. No.

25 MR. HEBERT: No further questions. Thank you.

1 JUDGE COLLYER: Thank you.

2 MR. GARZA: I've got one question, Your Honor, if
3 that's all right.

4 JUDGE COLLYER: Yes, please identify yourself for the
5 record and for Judge Tatel.

6 MR. GARZA: Jose Garza, and I represent the Mexican
7 American Legislative Caucus and the Texas branch of NAACP, and I
8 am with the Law Office of Jose Garza in Texas.

9 JUDGE COLLYER: Thank you, sir.

10 **DIRECT EXAMINATION**

11 BY MR. GARZA:

12 Q. Representative Anchia, Representative Martinez Fischer
13 testified that the SB14 was assigned to a special committee, and
14 that the members of the special committee were appointed by the
15 speaker of the House. Do you know what impact that has in terms
16 of the ability of minority members of the legislature to impact
17 the legislation in committee?

18 A. One of the things it does do is it obviates seniority picks.
19 And the way that works typically in the Texas legislature, if
20 you are populating a standing committee, members who have been
21 in the legislature for a long time rise in seniority in the body
22 and are able to pick the committees of their choice. And by
23 setting up a select committee, they all became picks of the
24 speaker of the House, and there were no seniority picks
25 available. I believe six of the topmost senior members of the

1 legislature are minority members.

2 So this may have had an impact on the composition of
3 the committee.

4 JUDGE COLLYER: Thank you, sir. Is there any
5 cross-examination? Mr. Sweeten?

6 MR. SWEETEN: Yes, Your Honor.

7 **CROSS-EXAMINATION**

8 BY MR. SWEETEN:

9 Q. Good afternoon, Representative Anchia.

10 A. Good afternoon.

11 Q. We met approximately a month ago whenever I took your
12 deposition in Austin. Correct?

13 A. Correct.

14 Q. Now, I'm going to ask you a few questions about your
15 testimony here today. First thing is that you, yourself, are on
16 a select committee in the House, correct, currently?

17 A. Recently, I was placed on a select committee to do interim
18 study of school finance.

19 Q. That is the House Select Committee on School Finance?

20 A. That is correct.

21 Q. You're appointed to be on that select committee by
22 Speaker Straus. Correct?

23 A. Correct.

24 Q. Speaker Straus is a Republican. Right?

25 A. Correct.

1 Q. Now, let's talk a little bit about the issue of voter fraud
2 that has gone through the --

3 A. May I add one more thing about the select committee?

4 Q. Sure.

5 A. I think an important distinction for the court is that this
6 select committee is not designed to hear bills. It has an
7 interim charge of simply studying the school finance system. So
8 that I think that is worth mentioning.

9 Q. Nevertheless, you are on the select committee currently
10 appointed by a Republican speaker. Right?

11 A. Correct. Out of session.

12 Q. So in 2011 you were not a member of the House Select
13 Committee on Voter Fraud. Correct?

14 A. That is correct.

15 Q. You were permitted by then Republican chair of the
16 committee, Dennis Bonnen, to ask questions of witnesses, and you
17 freely did so. Correct?

18 A. That is correct. In fact, I believe the chairman either
19 invited me specifically to sit as a nonvoting member of the
20 committee, and ask questions, or it may be just an open
21 invitation. It is frequently the prerogative of chairs, but
22 chairs usually invite all members of the legislature to come sit
23 in on committee hearings if there's a particular subject matter
24 of interest. But you are correct.

25 Q. Okay. And you wouldn't dispute the fact that 39 witnesses

1 were called to testify either as proponents or opponents of the
2 that legislation in that committee. Right?

3 A. I don't know the exact number but it was a long night.

4 Q. You, yourself, questioned Chris Ward, an attorney,
5 concerning the *Crawford* decision. Is that correct?

6 A. I don't recall, but I do recall I asked a lot of questions
7 on the select committee.

8 Q. You wouldn't dispute that you quizzed Ann McGeehan, the
9 Secretary of State. Correct?

10 A. I do remember that, yes.

11 Q. You quizzed Rebecca Davio of the DPS. Correct?

12 A. I asked her questions, yes.

13 Q. David Maxwell of the Attorney General's office?

14 A. I asked him questions as well.

15 Q. That was all in open proceeding. Other members of the
16 committee were there and listening to other points of view than
17 yours. Correct?

18 A. That is correct.

19 Q. Now, it's a true statement, isn't it, that strengthening the
20 integrity of the election system is an important thing to you.
21 Correct?

22 A. True.

23 Q. And you agree that ensuring that those who show up to the
24 polls are who they say they are is a laudable goal?

25 A. Yes.

1 Q. Under current Texas law, a person can go to the polls and
2 utilize a utility bill to vote. Is that correct?

3 A. Isn't it two forms of nonphoto ID?

4 Q. And if that's -- let me just ask you, do you know one way or
5 the other whether a utility bill is sufficient?

6 A. I don't recall. I don't recall.

7 Q. Do you know if a pay stub is sufficient to vote?

8 A. I don't recall.

9 Q. Now, with respect to minority support of voter ID, there
10 were a number of House minority members who voted for SB14.
11 Correct?

12 A. I believe there were.

13 Q. And can you name those for the court?

14 A. I believe Representatives Aliseda, Pena, Garza, Margo,
15 Carter, White voted in favor of the bill.

16 Q. Now, I'm going to change the subject --

17 A. Torres. Excuse me. Also Torres.

18 Q. I'm changing the subject a little and just ask you a couple
19 of questions about the practice of chubbing. Okay? We've heard
20 some testimony about it, so I'm not going to go into great
21 detail. But I want to ask you, when the House rules were
22 adopted in 2011, those rules eliminated the ability to chub the
23 local calendar. Isn't that right?

24 MS. BERKOWER: Objection, Your Honor, this is outside
25 the scope of the direct examination. He didn't testify at all

1 about the House rules.

2 MR. SWEETEN: Your Honor, she's brought up all four of
3 the legislative proceedings. This relates to an issue that
4 occurred in the 2011 session. It's been brought up by other
5 witnesses and it's directly relevant to 2011.

6 JUDGE COLLYER: Actually, your point is well taken, and
7 in a normal trial I would sustain your objection. Excuse me for
8 my verbiage here. But in this trial, where everybody has been
9 racing through to get things done, I will not require the
10 witness to come back to be a witness for the State of Texas to
11 answer this question. You may go ahead, sir.

12 MR. SWEETEN: Thank you, Your Honor.

13 BY MR. SWEETEN:

14 Q. In 2011, the House rules -- a Senate resolution was passed
15 to eliminate chubbing on the local calendar. Correct?

16 A. Yes.

17 Q. You voted yea?

18 A. Did you say Senate resolution? I apologize.

19 Q. Well, I may have misspoke. It's a House resolution?

20 A. That's correct.

21 Q. And you voted yea for that resolution to eliminate chubbing
22 on the local calendar in '11. Right?

23 A. Yeah, so the answer is yes. But it was part of a much
24 larger rules package, and I voted in favor of it.

25 Q. Nevertheless, you voted yes?

1 A. That is correct. That is correct.

2 Q. Now, as you're sitting here, with respect to the different
3 forms of ID provided by SB14, you don't know which forms of ID
4 racial minorities are more likely to have. Is that correct?

5 A. No, I carried -- you are correct, I carried an amendment to
6 that effect --

7 Q. If you could just answer my question.

8 A. I'm sorry.

9 Q. Which you have.

10 If asked those numbers, it would be pure supposition on
11 your part to offer an opinion on that issue. Correct?

12 A. We just don't know. And I may add --

13 Q. Well, actually, I think you've answered my question on that.

14 A. Okay.

15 Q. You would agree that Representatives of the House have a
16 duty to represent their constituents. Correct?

17 A. Yes.

18 Q. And you try to do that?

19 A. Yes.

20 Q. And there's nothing wrong with a representative voting for
21 policies that are favored by his constituents?

22 A. Yes.

23 Q. And you don't have any basis to dispute that voter
24 identification is supported by the majority of voters in the
25 State of Texas?

1 A. I have no basis to dispute that. I have no basis to affirm
2 it either.

3 Q. And when we talked on June 6th, you indicated that you have
4 no personal knowledge of a single Texas registered voter who
5 does not possess a form of ID that will permit him or her to
6 vote if SB14 is enforced. Correct?

7 A. Stated at that time, yes.

8 MR. SWEETEN: No further questions. Thank you.

9 THE COURT: All right. Thank you. Is there any
10 redirect?

11 MS. BERKOWER: Yes, Your Honor. Briefly.

12 **REDIRECT EXAMINATION**

13 BY MS. BERKOWER:

14 Q. You were just asked whether you were able to question DPS
15 and secure -- sorry. You were just asked whether you were
16 allowed to question DPS representatives and representatives from
17 the Secretary of State's office at the select committee hearing.
18 Do you remember that?

19 A. Yes.

20 Q. And that was Ms. McGeehan and Ms. Davio?

21 A. Yes.

22 Q. Were they able to fully answer the questions you asked of
23 them?

24 A. No. What we were driving at was trying to get a sense of
25 what the ID penetration rate was, how much this was going to

1 cost, and we also wanted to get a sense of how many people would
2 not have ID. And they were unable to answer that.

3 Q. To your knowledge, was that evidence ever presented to the
4 House in 2011?

5 A. No.

6 Q. Did you ask other -- well, did you ever seek to learn how
7 many people did not have the ID required by SB14 yourself?

8 A. Yes.

9 Q. What did you do?

10 A. Well, I asked -- for starters, I asked the bill author - or
11 excuse me, the House bill sponsor - if she had any data related
12 to the potential disenfranchising effect on this bill on
13 protected classes, and specifically African-Americans and
14 Hispanics. I also asked her about Asians, because in
15 Harris County that's an important minority population. And she
16 was unaware of any studies related to that, the availability
17 of -- the availability of ID in those populations.

18 And I later carried an amendment that asked that we not
19 change the subject of the bill, simply delay its implementation
20 until the Secretary of State's office was able to provide us
21 with a study gauging this, and that amendment was defeated and I
22 believe the House sponsor opposed it.

23 Q. As a Representative in the House, do you have the resources
24 yourself to conduct this type of study?

25 A. No, we typically rely on the executive branch to do these

1 things, the chief elections officer of the State of Texas, who
2 is the Secretary of State. So it was thought that the Secretary
3 of State would be able to furnish this data to the members of
4 the legislature so we could make good decisions, and that was
5 never furnished.

6 Q. You testified a minute ago that politicians often work on
7 policies -- that work to effectuate policies that are popular
8 among their constituents. Do you remember that?

9 A. That's right, I do.

10 Q. As an elected representative, do you have a duty to assess
11 whether the policies favored by your constituents are lawful?

12 A. Lawful and constitutional, you're absolutely right about
13 that. I imagine Jim Crow laws and the poll tax in Texas were
14 immensely popular in many districts, many state representative
15 districts and many state districts throughout Texas, but as it
16 turns out, they were immoral and unconstitutional.

17 Q. Turning your attention back to the select committee just for
18 a moment, were you able to vote when the select committee heard
19 SB14?

20 A. I was not.

21 Q. Why not?

22 A. Because I was not a member of the select committee.

23 MS. BERKOWER: I have nothing further, Your Honor.

24 JUDGE COLLYER: All right. Thank you very much. Do
25 the defendants have any other witnesses to present? Woops,

1 you're done.

2 THE WITNESS: Thank you.

3 JUDGE COLLYER: Thank you. It was nice to meet you,
4 Representative Anchia.

5 MR. DELLHEIM: We call Richard Kousser.

6 (Oath administered by Courtroom Clerk.)

7 MR. DELLHEIM: Good afternoon, Your Honors. My name is
8 Richard Dellheim. I'm an attorney representing Eric Holder, and
9 I'm with the United States Department of Justice.

10 JUDGE COLLYER: And could you just spell your last name
11 for us, sir?

12 MR. DELLHEIM: Of course. D-E-L-L-H-E-I-M.

13 JUDGE COLLYER: Thank you, sir.

14 MR. DELLHEIM: May I proceed, Your Honors?

15 JUDGE COLLYER: Please, go right ahead when you're
16 ready.

17 MR. DELLHEIM: Thank you very much.

18 **(J. MORGAN KROUSSER, DEFENDANT witness, having been duly sworn,**
19 **testified as follows:)**

20 **DIRECT EXAMINATION**

21 BY MR. DELLHEIM:

22 Q. Good afternoon, Dr. Kousser.

23 A. Good afternoon.

24 Q. Would you please introduce yourself to the Court?

25 A. I'm a professor of history in social science at the

1 California Institute of Technology.

2 JUDGE COLLYER: Why don't you give us your name for the
3 record, first? That would help.

4 THE WITNESS: Certainly. It is J. Morgan, M-O-R-G-A-N,
5 Kousser, K-O-U-S-S-E-R.

6 JUDGE COLLYER: Thank you, sir.

7 BY MR. DELLHEIM:

8 Q. How long have you been a professor at CalTech?

9 A. I've been a professor at CalTech since 1971. I've been
10 there since 1969.

11 Q. And you've been retained as an expert witness in this case?

12 A. That's correct.

13 Q. What were you asked to examine in this case?

14 A. I was asked to examine whether the intentions of the
15 legislature in passing SB14 were racially discriminatory.

16 Q. And have you ever analyzed the intent underlying the
17 adoption of specific requirements for in-person voting in your
18 scholarly research and writing?

19 A. I have. My doctoral dissertation and first book, which was
20 called "The Shaping of Southern Politics," considered the
21 passage of all the election laws, I think, in the 11
22 ex-confederate states in the period from 1880 through 1910. I
23 considered registration laws, secret ballot laws, poll taxes,
24 literacy tests, understanding clauses, what were called
25 "eight-box" laws, which were a form of literacy test, and

1 everything else that was -- that took place during that time in
2 the manner of changing election laws.

3 And that focus -- my focus there after determining
4 through a statistical analysis what the effects of those changes
5 were was on the intent of the legislatures and constitutional
6 conventions. In particular, it was widely thought that the --
7 and widely talked about at that time that they had a racially
8 discriminatory intent; I also asked whether they meant to
9 discriminate against poor whites when they passed such laws as
10 the poll tax, and whether they meant to hamper the development
11 of parties opposed to the Democratic Party, Republican Party,
12 Populace Party, similar parties. I concluded that they had all
13 three intentions to disfranchise African-Americans, poor whites,
14 and to disadvantage opposition parties.

15 Q. Dr. Kousser, have you served as an expert witness in other
16 federal voting rights cases? And if so, how many?

17 A. I have, in approximately 37 such cases.

18 Q. How many of those cases involved an analysis of legislative
19 intent?

20 A. Approximately 15. Some of them involved both statistical
21 testimony and an analysis of intent. For example, in a recent
22 Texas redistricting cases, I testified on both in both
23 San Antonio and I believe in this courtroom.

24 Q. And did any of those lawsuits challenge restrictions on
25 registration or voting?

1 A. When I first testified, the first case that I ever testified
2 in was a case that when it came to the Supreme Court was a case
3 known as *Hunter v. Underwood* in 1985. And it concerned, I
4 believe, it's Section 201 of the Alabama Constitution of 1901,
5 which was the so-called petty crimes provision. It
6 disfranchised people for such crimes as miscegenation and wife
7 beating, and I concluded that it was adopted with a racially
8 discriminatory intent. The appeals court and later the Supreme
9 Court came to the same conclusion.

10 Q. Were there any other cases in which you testified as an
11 expert witness on the subject of legislative intent that you
12 consider to be significant for this court to know?

13 A. Well, perhaps the most significant one was *Garza v. Los*
14 *Angeles County Board of Supervisors*. And what I testified to
15 there was about the redistrictings, the set of redistrictings
16 that took place from 1959 through 1981 which left it impossible
17 to elect a Latino candidate of choice in the election. The
18 District Court and later the appeals court agreed with my
19 conclusions, and part of the appeals court decision was drawn
20 from my report.

21 Q. Dr. Kousser, let's turn to this case for a second. Have you
22 reached conclusions in regard to the questions you were asked to
23 investigate here? And that is specifically whether SB14 was
24 adopted with a discriminatory purpose?

25 A. I have.

1 Q. What were those conclusions?

2 A. The conclusion was that it was adopted with a discriminatory
3 purpose.

4 Q. Before we get into the substance of your opinion, I want to
5 know what types of source materials you examined as part of your
6 methodology to determine that question.

7 A. I looked at hearings, I looked at legislative debates, I
8 looked at newspaper articles, I looked at scholarly sources
9 about Texas and about political science and history, and I also
10 looked at depositions.

11 Q. Are those the type of source materials you normally examine
12 when you consider these kinds of issues?

13 A. They are. Usually, I don't have depositions available, but
14 they were available in this case.

15 Q. Let's talk for a second about your methodologies. The
16 methodology you employed in examining this issue is the same
17 methodology you employed in other cases such as *Garza*?

18 A. It is. After the *Garza* case and after the decision of the
19 District Court being so favorable, I thought I would submit the
20 paper to a law review for publication, and I decided to include
21 a section, a general section on how to determine intent. The
22 paper as it was eventually published was called, "How to
23 Determine Intent, Lessons From LA." In that I set out -- tried
24 to set out some sort of standard method or consideration of
25 questions that one might always take into account in determining

1 intent, particularly of election laws for my purposes and for
2 the purposes of other scholars, maybe of courts, in trying to
3 look at these.

4 I drew on both my own experience in analyzing these
5 sort of the things, and I looked at what federal District
6 Courts, appeals courts, and the U.S. Supreme Court had said
7 about such issues, since they tended to talk about such issues
8 more than historians typically did.

9 So I tried to learn from all of these and put them in
10 some sort of systematic order.

11 Q. Dr. Kousser, I'm going to ask you briefly to describe that
12 methodology. I'm going to put something up on the screen.

13 MR. DELLHEIM: Would you please put up Defense
14 Exhibit 580?

15 JUDGE COLLYER: 580. Thank you.

16 BY MR. DELLHEIM:

17 Q. Dr. Kousser, do you recognize what's on the screen in front
18 of you?

19 A. Yes.

20 Q. What is that?

21 A. It's a prettified picture of a document that I sent to the
22 Justice Department, and they're better at doing pretty pictures
23 than I am. It sets out the 10 purpose factors that I talked
24 about in a chapter of my book, "*Colorblind Injustice*". And it's
25 of use in trying to analyze such -- the intentions of passage of

1 election laws.

2 Q. I want you briefly to go through these factors and help the
3 Court how one goes about trying to determine legislative intent.
4 Briefly, sir.

5 A. I'll try to be as brief as possible. Models of human
6 behavior is a sort of cautionary note. Everybody starts to
7 analyze things with certain assumptions or prior beliefs or
8 guesses, and this calls on us to essentially make them
9 self-conscious.

10 For example, in this particular case, the State seems
11 to believe that if a law was passed with certain provisions
12 anywhere at any time, that it must have had the same motives as
13 a law similar to it passed in any other state at any other time;
14 in particular, if it was passed in Indiana in 2005, then a law
15 which was somewhat similar that was passed in Texas in 2011 must
16 have the same purposes. And the first factor is simply to say,
17 all right, we've got to look at the evidence to see whether
18 that's true, and not just decide the case by assumption.

19 The historical context is more or less
20 self-explanatory. It could be called the historical background.
21 The text of the law or the lines of districts can be important.
22 The lines of districts, particularly compared to the demographic
23 composition of those districts, was very important in the Texas
24 redistricting trial. We saw lots of pictures of those
25 particular districts.

1 Demographic facts, how did the demography of the area
2 change, what was it, the climate of racial politics, that's
3 basically self-explanatory. The background of key decision
4 makers, and other actions of key decision makers. One might
5 look at such things as what other sorts of bills did they push,
6 favor, sometimes the background is exceedingly important.

7 Statements by important participants, the eighth
8 factor, is self-explanatory. State policies and institutional
9 rules; in particular, it's important to look to see if there was
10 some deviation from normal procedures that enabled something to
11 pass, as in this case.

12 And the final factor, impact, or effect, is important;
13 particularly, the anticipated impact or effect is important for
14 trying to determine intent.

15 Q. Are you familiar with the case that's commonly known as
16 *Arlington Heights*?

17 A. I am.

18 Q. To what extent, if any, does your methodology overlap with
19 the *Arlington Heights* factors?

20 A. I think six of them are almost exactly the same. I've
21 broken down some of the *Arlington Heights* factors a bit.
22 *Arlington Heights* would probably consider demographic facts part
23 of the historical context. I simply broke that out separately.

24 Q. And to your knowledge, has your methodology ever been
25 challenged by other scholars as invalid?

1 A. I do not think so.

2 Q. Has any court rejected your methodology as unreliable?

3 A. Not that I'm aware of.

4 Q. Let's get to the heart of your analysis, if we could. And
5 let's start with the historical background. Would you summarize
6 for the court the historical background or the context in which
7 SB14 was considered?

8 A. Well, the social context is particularly important. A
9 demographic fact of particular importance is that between 2000
10 and 2010, for the first time since statehood, Texas became a
11 majority/minority state. It had been majority non-Hispanic
12 white from the time that it entered the union in 1846 to 2000
13 census. During that period of time it changed.

14 And this was a change which was very often commented
15 upon in the run-up to redistricting. It was widely understood
16 that the major growth of population had been Hispanic during
17 that period of time, and there was considerable concern on the
18 part of non-Hispanic whites about losing control.

19 There were two other things that happened which were
20 political facts at the time which were particularly important.
21 The first is that the Republican Party dominance grew. The
22 Republican Party in the 2002 election took over the state House
23 of Representatives for the first time, I think, since
24 Reconstruction. Now they control both houses of the state
25 legislature, all the major state offices, and so on.

1 That group -- the Republican dominance is increasingly
2 in a racially polarized electorate. During the Texas
3 redistricting trial, I and a bunch of other expert witnesses did
4 a lot of statistical analysis of elections in Texas during that
5 period of time, and all of us agreed substantially that there
6 was quite overwhelming racial polarization in those elections.

7 The Republican Party was dependent on white votes, not
8 Hispanic/white votes; the Democratic Party was increasingly
9 dependent on black and Latino votes. So those three things put
10 together, an emerging majority minority population, Republican
11 dominance, and an increasing racial polarization, set the stage
12 for the passage of SB14.

13 Q. Explain briefly how those factors relate to the passage of
14 SB14?

15 A. They relate because the Republicans essentially had two
16 alternative strategies; either they would make more of an appeal
17 to Latinos in particular, and African-Americans as well,
18 Asian-Americans in certain areas of Texas, directly adopting
19 policies that they favored, or they would try to reduce the
20 number of those people that were voting. If they wanted to
21 retain their dominance and continue to be the dominant political
22 party, they had those two choices. In SB14, they made the
23 second choice.

24 Q. Let's talk, if we could, briefly about the sequence of
25 events leading to SB14's passage.

1 A. It starts in 2005, as Representative Anchia was saying.
2 That was the first consideration of a bill on voter
3 identification. And the struggle from 2005 through 2009 shows
4 that this is not simply a rational, simple bill that ought to
5 appeal to everybody, everybody is against voter fraud, nobody
6 wants dishonest elections, and all that sort of stuff. In fact,
7 it was a brutal battle between members of the two political
8 parties, and particularly minority members in the
9 Democratic Party, and majority members.

10 In the initial bill, there was an effort to block it,
11 and it succeeded. Let me explain quite quickly the rule.

12 Q. And if I may interrupt you, when you say "the initial bill,"
13 what time frame are we talking about?

14 A. We're talking about 2005.

15 Q. Thank you.

16 A. The rule that was particularly important was the so-called
17 two-thirds rule in the Senate. From the 1950s, at least, on, it
18 required two-thirds of all senators to bring a bill to the
19 Floor; one-third of all senators could block the consideration
20 of the bill. And this built sort of comity, a familial
21 atmosphere. The Senate is often described as a family in Texas.
22 But if the Democrats continued to hold one-third, and they
23 really, really, wanted to, they could block the consideration of
24 a bill.

25 They did so in the Senate in 2005. There was one way

1 around this, and that was for a bill to have passed the Senate,
2 then pass the House, get amended in the House; if the amendments
3 were okay with the Senate sponsor, then the bill could be voted
4 on even if it didn't have two-thirds to take it up. That
5 happened at the end of the session in 2005, and Senator Ellis of
6 Houston, an African-American Representative, threatened a
7 filibuster over the last couple of days. He did not have to
8 carry this out because of another rule. But it was a really
9 nasty fight in 2005.

10 It became much nastier in 2007. And in 2007, it became
11 nastier because one of the state senators -- the Democrats had
12 only 11 state senators, I think, in 2007. It became nastier
13 because one of the state senators, Senator Gallegos of Houston,
14 had a liver transplant at the beginning of the session, and he
15 was in the hospital for a long time. With a month to go in the
16 legislative session, he insisted on checking out of the hospital
17 and coming back, and then he had to go back for an examination
18 about a week before the legislative session ended. There was
19 evidence that his body was rejecting the liver, but against
20 doctor's orders he checked out of the hospital and came back and
21 they set up a bed for him in an antechamber, a hospital bed,
22 where he stayed for three days to ensure that the bill didn't
23 pass.

24 Q. When you say "the bill," you're talking about the Voter ID
25 Bill?

1 A. I'm talking about the Voter ID Bill.

2 Q. And that was in 2007?

3 A. And that was in 2007.

4 Q. Was the bill brought up again in 2009?

5 A. It was. And the major change in 2009 was that only for
6 voter identification bill, the two-thirds rule was suspended.
7 Not for any other bills. Democrats proposed that it apply to
8 education bills, budget bills, and such. But only for voter
9 identification was the two-thirds rule suspended.

10 Q. Why is that?

11 A. The Democrats could not block voter ID in the Senate in
12 2009.

13 Q. Were there any other changes in procedure that you find to
14 be relevant to your analysis here?

15 A. Well, in 2009 -- I think the court must be aware of the term
16 "chub" by now. In 2009, Democrats in the House executed a chub,
17 which was sort of a multiperson filibuster. House
18 Representatives couldn't talk indefinitely, as senators could.
19 They could only talk for 10 minutes. So they used the fact at
20 the end of the legislative session that there were a lot of
21 bills that came up under the local and consent calendar which
22 had priority that could be discussed endlessly. So they each
23 talked for nine-and-a-half minutes, and executed a five-day chub
24 which ended up putting off any action whatsoever on
25 approximately 200 bills, many of which were really quite

1 important.

2 The Democrats felt so strongly about this that they
3 were willing to give up about 80,000 children on the CHIP
4 program, and they did.

5 Q. What role did Hispanic or African-American legislators play
6 in the passage of those bills in 2005, 2007, 2009?

7 A. They were very active. Most of the Democratic legislators
8 were minority and they held leadership positions, so they
9 obviously played a considerable role. Senator Ellis was the
10 filibusterer. Most of the people who engaged in the chub in
11 2009 were minority members, and Senator Gallegos and
12 Senator Uresti, I won't describe that incident, but it's in my
13 paper, were very active in 2007.

14 Q. Dr. Kousser, why are these partisan struggles relevant to
15 your analysis of racial purpose?

16 A. Well, they are because, as I pointed out earlier, the Texas
17 electorate is very racially polarized, and the legislative
18 houses are very racially polarized. About 90 percent of the
19 representatives in every -- of the Republicans in every session
20 of the state legislature during that time period have been
21 non-Hispanic whites. Particularly in 2011, the vast majority of
22 the Democratic state legislatures are minorities. So there is a
23 confluence. There's such a high correlation between
24 partisanship and race that a bill that has partisan effects
25 would have racial effects.

1 Furthermore, if you look at who would be disfranchised,
2 this is not just any bill, this is not just a budget bill, this
3 is not just a schools bill, this is a bill that would have the
4 effect of making it more difficult for particular people to
5 vote. Who would it make more difficult for people to vote?
6 What sorts of people in the Democratic coalition would have more
7 difficulty voting because of this? They would be minorities,
8 primarily, some elderly people, some college students, but
9 predominantly minorities.

10 So a bill that disfranchises Democrats and particularly
11 affects poorer people has a very disproportionate effect on
12 minorities. It's impossible to separate those two.

13 Q. Let's step forward a little bit to 2011, and I you'll agree
14 with me there's a difference outcome in 2011. Correct?

15 A. There was.

16 Q. What accounts for the different outcome in 2011? How come
17 SB14 passed where its predecessor bills did not?

18 A. The first thing was the 2010 elections. In particular, the
19 Republicans did well in the lower house of the state
20 legislature. In 2008, with the Obama surge, the lower house of
21 the state legislature was 76/74 Republican, and in that context,
22 the Republicans had to compromise, or at least possibly had the
23 compromise more than they did later.

24 By 2011, at the end of the election in 2010, they had a
25 99 to 51 majority, and two Representatives shifted after the

1 election from Democratic to Republican, giving the Republicans a
2 more than two-thirds majority, 101 to 49 in the lower house of
3 the state legislature. This meant that one other potential
4 procedural device that the Democrats could have used which was
5 to break a quorum by leaving the state as they had done in the
6 Tom Delay redistricting in 2003. This was no longer open to
7 them because two-thirds was a quorum.

8 So at that point, the Democrats had little choice. And
9 one of the changes, another change that went through --

10 Q. Forgive me. When you say "change," you mean a procedural
11 change?

12 A. Change in the procedure of the house was to get rid of the
13 chub. There were some Democrats who were not happy with the
14 chub in 2009, who wanted to see their bills voted on. With the
15 Republicans able to kill a chub at any time because all they
16 needed was two-thirds vote to change the rules even in the
17 middle of the session, there was no real reason to keep it. And
18 so Democrats joined Republicans in changing the rules to make it
19 impossible to have a chub.

20 There were other things in 2011. The bills -- one of
21 the reasons that the Democrats had been able to run a chub, and
22 one of the reasons that Senator Ellis had only had to threaten a
23 filibuster at the last minute, was that the bills got delayed.
24 In the Texas legislature, a bill, I think, has to be declared an
25 emergency bill to be acted on finally in the first 60 days.

1 Governor Perry declared that voter ID was an emergency bill in
2 2011, and Lieutenant Governor Dewhurst ranked it first on the
3 list so that it would have to be taken up first. It couldn't
4 move towards the end of the session and let the Democrats find
5 some other procedural device to stop this.

6 Q. And as you testified, the bill passed. How would you
7 characterize the degree of minority support for SB14?

8 A. Democratic minority members voted unanimously against it, I
9 believe. There were some minority votes against it -- for it,
10 rather. They were Republicans. In the Texas redistricting
11 trial, I did an analysis of racially polarized voting in all of
12 the contests involving Hispanic Republicans during the decade
13 from 2002, the eight years from 2002 -- the five elections from
14 2002 through 2010, and I also analyzed the elections in 2010 for
15 other minority Republicans.

16 In all of those elections, and I present those tables
17 as part of my prime report in this case, just reprinting them,
18 in essence, from the Texas redistricting report, in all of those
19 cases minorities, minority voters, voted against the minority
20 Republicans, often quite overwhelmingly.

21 Representative Aliseda, for example, got approximately
22 23 percent of the Hispanic vote in 2010. He was not the
23 candidate of choice.

24 So all of the minority representatives who voted for
25 SB14 were not representatives of choice of the minority

1 community, and I don't think that should be considered the
2 decision of the minority community on the basis of that
3 evidence.

4 Q. Okay. Well, let's talk for a second about what the
5 proponents of the law put forward as the basis for the necessity
6 of passing it.

7 JUDGE COLLYER: I'm sorry to interrupt you, sir. Are
8 you, therefore, moving to a new subject matter?

9 MR. DELLHEIM: Yes, ma'am.

10 JUDGE COLLYER: I'm going to pull the rug out from
11 under you, which I seem to do on a fairly regular basis in this
12 trial. Since I'm the timekeeper, I get to do that. It's now
13 3:30, so we will take a break. Okay? Thank you, sir.

14 Thank you, Dr. Kousser. Please don't talk about your
15 testimony during the break. Okay?

16 THE WITNESS: Certainly.

17 (Recess taken at 3:32 p.m.)

18 JUDGE COLLYER: Go ahead, Mr. Dellheim.

19 JUDGE TATEL: Just hold on one second. I just wanted
20 to ask your witness one question before you keep going.

21 MR. DELLHEIM: Sure.

22 JUDGE TATEL: Dr. Kousser, when you were testifying
23 earlier about racially -- the situation when you have racially
24 polarized voting.

25 THE WITNESS: Yes.

1 JUDGE TATEL: And you were making a point that when you
2 have, say, a Republican legislature that wants to protect its
3 power by disenfranchising Democrats, the effect of that is also
4 where you have polarized voting to disenfranchise minorities.
5 Right?

6 THE WITNESS: Correct.

7 JUDGE TATEL: I understand that, you know, we're
8 dealing with the effects prong of Section 5, but as a scholar
9 researching this, how do you sort out the motive? How do you
10 determine in a situation like that whether the motive - because
11 that's what you're testifying about - was partisan or racial?
12 What are the scholarly approaches to answering that question?
13 How do you answer that?

14 THE WITNESS: Well --

15 JUDGE TATEL: Do you see my point?

16 THE WITNESS: I do. Let me talk just a second about
17 some of the evidence on that particular point. During the
18 debates there was considerable discussion both in the House and
19 the Senate - and popularly - about the racial incidence of the
20 effect of the legislation, and a great deal of that effect was
21 anticipated. So what I would focus on here is the anticipated
22 effect to try to determine the intent, and there were --

23 JUDGE TATEL: In a state where you have -- we can just
24 keep this away from Texas for a minute, because it's probably
25 easier, and then I'll let you go back to your questioning. But

1 in a situation where you have racially polarized voting,
2 obviously everybody is going to know that, aren't they?

3 THE WITNESS: Yes.

4 JUDGE TATEL: People will know that. And members of
5 the legislature will know that restraining Democratic voting
6 will limit minority voting. But I'm still not quite sure I
7 understand from a scholarly point of view how you -- what you
8 look at to reach a conclusion that, well, in one state where
9 this occurs, it's primarily -- or it's a partisan effort, it's
10 just Democrats -- Republicans wanting to maintain political
11 power, whereas in another state what's going on is racial. I
12 mean, is it possible to do that?

13 THE WITNESS: It is possible, I think. And I think
14 what you have to do is to look at the particular evidence in
15 that state. It's different from the evidence that we have
16 available, at least, for Indiana. And in Texas there was a
17 great deal of discussion about the racial incidence of the
18 effects of the law, and there were attempts by Democrats to try
19 to find out -- one of the things that I talk about in the paper
20 is that Republicans resisted again and again efforts to have
21 studies made of the racial incidence of the effect of the law.
22 And I think -- suppose that we were here. Suppose that the
23 Secretary of State's office or the DPS or some other official
24 group had conducted a matching program, had conducted a survey
25 which was representative - a large enough sample so that

1 reliable inferences could be drawn - and suppose that they had
2 found that there was a racially discriminatory impact of the
3 law. Suppose that that had happened before the passage of SB14.
4 This would be a pretty open and shut case.

5 JUDGE TATEL: On purpose?

6 THE WITNESS: On purpose.

7 JUDGE TATEL: Really? Tell me why.

8 THE WITNESS: Because the anticipation of the effect
9 would have been apparent to everybody.

10 JUDGE TATEL: Yeah, but if their purpose -- suppose
11 their purpose is totally partisan. They're Republicans wanting
12 to maintain control, and they find out that -- yeah, they do a
13 study, and they find out that as a result of this they're going
14 to disenfranchise a large number of Democratic minorities. Does
15 that mean their motive is racial?

16 THE WITNESS: If they're disproportionately
17 disenfranchising minorities, yes, I think it does. The same
18 thing was true --

19 JUDGE TATEL: I don't understand the difference between
20 the two prongs of Section 5 effect. I understand your effects
21 case, easily. Why don't you continue? Maybe you see where I'm
22 coming from, and counsel, maybe you -- you know --

23 THE WITNESS: I do --

24 JUDGE TATEL: -- as you try to frame your questions,
25 you may want to focus on this for me. Okay? Go ahead.

1 MR. DELLHEIM: Thank you very much, Your Honor.

2 BY MR. DELLHEIM:

3 Q. Dr. Kousser, I want to turn back to SB14 at the time that it
4 was passed or adopted in 2011. What were the proponents of the
5 law putting forward as the reason for the necessity of passing
6 SB14?

7 A. Well, they put two arguments, primarily, forward. One of
8 the arguments was that there was widespread fraud, and they
9 particularly focused in public and probably more outside the
10 legislative arena on the idea that there was widespread
11 in-person voting by, quote, "illegal aliens," end quote.

12 And the second was whether the bill would restore
13 confidence in the integrity of the political process. That sort
14 of formula was used quite considerably in the legislature from
15 2007 on, and it almost replaced the fraud considerations in
16 2011.

17 Q. What evidence was there that the legislature considered of
18 the existence of in-person voting fraud that SB14 was intended
19 to eliminate?

20 A. There was a considerable amount of initial talk about such
21 fraud in a series of arenas, including the legislature. And
22 when the claims were examined -- sorry, when the claims were
23 examined in considerable detail and much more carefully, the
24 claims would dissolve.

25 There's a point in the paper when I discuss a claim

1 that was made by a web site called The Texas Watchdog just
2 before the 2008 election that there were 6,000 dead people
3 voting in Dallas County, on the rolls in Dallas County. It took
4 the *Dallas Morning News* about two months to go through very
5 specifically all of those people, and I put in about a page of
6 that newspaper article. It goes from 6,000, and it goes down
7 one by one until finally they conclude that perhaps one person
8 voted illegally from that list of 6,000. They did the same
9 thing in the legislature.

10 And the most important of the efforts to talk about
11 fraud, which turned out not to turn out very much fraud, was led
12 by the Attorney General. The Attorney General in 2006, after
13 the first consideration of the Voting ID Bill in 2005, and after
14 that had failed, launched an investigation into what he called,
15 quote, an "epidemic" of voter fraud. He started with this large
16 conclusion, and he said he was going to devote \$1.4 million of
17 the Governor's funds to holding conferences with local
18 officials, sheriffs, election officials, district attorneys, and
19 so on around the state. He specified the counties that he was
20 going into; he said that it would cover about 70 percent of the
21 registered voters in Texas; he would prosecute a great deal more
22 election fraud.

23 But in 2008, when the man in the Attorney General's
24 office, Eric Nichols, who was in charge of the office that had
25 conducted this inquiry, testified before the Committee of the

1 Whole Senate on the Voter ID Bill, he said that he had found
2 perhaps -- they had found and investigated perhaps 30 instances;
3 they had convicted many fewer; and there was perhaps one case of
4 in-person voter fraud that they had brought to light and
5 convicted.

6 So it starts with a large list and a large claim, and
7 it ends with almost no in-person voter fraud proven. And it was
8 done similarly in San Antonio with the district attorney there,
9 and in claims that were made by other people.

10 Q. Okay. What other reasons were given, in addition to fraud,
11 for the passing of SB14?

12 A. Well, the confidence in the integrity of the political
13 process was talked about quite a lot. At the end of the
14 discussion in 2011 in the House, when Representative Harless was
15 discussing things with Representative Anchia, she said at the
16 end of her soliloquy that this is not about fraud, and she had
17 talked about the confidence in the electoral process. But they
18 never presented any evidence whatsoever that there was a
19 dramatic decline in the confidence in the electoral process.
20 They presented no surveys to show that Texans lacked confidence
21 in the integrity of the election process.

22 And with the Republicans in control and winning
23 election after election, it was exceedingly implausible that
24 they were -- they had suddenly lost confidence in the electoral
25 process, and Democrats, who were losing overwhelmingly, had

1 great confidence in the electoral process. Nor was there any
2 evidence whatsoever offered that SB14 would restore any
3 confidence in the electoral process if there was a lack of it.

4 Q. So you're aware of no evidence actually that was presented
5 to the legislature. Is that correct?

6 A. That's right. Nobody ever testified that they had so badly
7 lost confidence in the electoral process that they had stopped
8 voting, or anything like that.

9 There was one point that was made that was quite
10 extreme along this line. Both in 2009 and 2011, in the Senate
11 and in the House, sponsors of the bill would say that more
12 minorities would start to vote as a result of the passage of
13 SB14 because they would -- they had stopped voting because they
14 lacked confidence in the electoral process, and they would start
15 voting again if SB14 were passed and they could have more
16 confidence in the electoral process. This seemed to me so
17 completely implausible, given the other discussion that took
18 place, that it undermined my confidence in the argument.

19 Q. Were there statements by participants at that time that you
20 considered to be relevant in your analysis here?

21 A. There were, and I think I've talked about some of them.
22 Lieutenant Governor Dewhurst continually talked about the
23 illegal aliens voting. I think I've talked about a referendum,
24 or a couple of referenda that Republicans held in 2006 and 2008
25 about voter ID. He actually ran a TV commercial that said that

1 voter ID was a way to stop illegal aliens from voting.

2 This was also discussed by the sponsor of the bill in
3 2007 in her speech, and it was -- there were widespread
4 discussions of illegal aliens voting. One of the most
5 interesting, in a way, was there was a person who testified in
6 2011 - I believe before a House committee - and he said that
7 voter ID was aimed at illegal aliens voting. And he was pressed
8 upon this by several representatives, finally including
9 Representative Pena, who although he had changed to the
10 Republican party, still denied that there were large numbers of
11 illegal aliens voting. And this witness finally said that he
12 was for the bill whether there was a problem that it solved or
13 not.

14 Q. And I believe your testimony is there was no evidence of a
15 problem put before the legislature at that time. Correct?

16 A. That's correct.

17 MR. HUGHES: Object to the leading.

18 JUDGE COLLYER: It's a wrap-up.

19 JUDGE TATEL: Since we're pausing for a second, again,
20 it 's a question -- I'm going to ask you the question as a
21 scholar. I hear what you're saying. You have shifting
22 rationales. Right?

23 THE WITNESS: That's correct.

24 JUDGE TATEL: And how do you know that those shifting
25 rationales -- they could be pretext for disenfranchising

1 minorities; they could also be pretext for disenfranchising
2 Democrats, couldn't they?

3 THE WITNESS: They could.

4 JUDGE TATEL: How do we as a court know which it is?

5 THE WITNESS: Well, I had to consider this issue quite
6 considerably in "The Shaping of Southern Politics," and it was
7 exactly the same issue. It was whether disfranchising blacks,
8 which meant disfranchising Republicans, had a partisan or a
9 racial concern. First of all, there was more evidence that it
10 was a racial concern. They said that sort of thing. But these
11 things were -- they were so connected with each other that it
12 was impossible to do one without doing the other.

13 What they tried to do also was to disadvantage
14 minorities in the South in the late 19th and early
15 20th centuries by making it impossible for them to have a
16 political vehicle which was viable which would make it possible
17 for them to win elections, to get policies that they favored
18 passed and so on. So that in that case - and I think in this
19 one - the partisan effect had an additional racial effect
20 because it made it more difficult for the people who adhered to
21 that party to get what they wanted passed, not just as Black in
22 the late 19th century or as Black and Latino here, but as people
23 who had a particular set of political ideals and political
24 interests that they wanted to forward.

25 The partisan effect multiplies the racial effect. I

1 argued that in "The Shaping of Southern Politics," and I would
2 argue that here, too.

3 JUDGE TATEL: Uh-huh. Thank you.

4 BY MR. DELLHEIM:

5 Q. Dr. Kousser, as part of your analysis, did you look at the
6 text of SB14? And if so, was there anything within the text
7 that you find relevant to your opinion?

8 A. I did. Table 1 of my longer paper looks at the current
9 requirements and the texts of the bills -- the requirements in
10 the bills from 2005, 2007, 2009, and also at SB14. And the
11 difference in the bills is quite interesting and informative.

12 Currently, there are a large number of identifying
13 documents that can be used. They were constrained a good deal
14 in the bills in 2005, 2007, 2009, but not so much as SB14.
15 There were still non-photo ID documents that could be used to
16 identify yourself in the earlier bills. The big change is,
17 between all of the other bills and the current requirements and
18 SB14, there was a very severe narrowing of the identification
19 documents that would be available. And this is relevant to the
20 intention, because it meant that what the bills were trying to
21 do - and particularly what SB14 was trying to do - was to
22 constrain the electorate by constraining the documents that they
23 could use to identify themselves.

24 Table 3, which is towards the end of my first report,
25 looks at all the amendments that were proposed in the Senate in

1 2011, and tries to determine what the effects of those bills
2 would have been by just looking at them, and whether the
3 legislature was open to continuing to make it possible for
4 minorities and other members to be able to vote. All of the
5 important amendments, the really important amendments that were
6 proposed by minority and other Democratic legislators, were
7 rejected.

8 One was particularly interesting with regard to the
9 discriminatory intent of the framers. It was offered by
10 Senator Ellis, and it called on the Secretary of State to issue
11 an annual report on the ethnic consequences, the effect on
12 groups of voters identified by ethnicity, of SB14. That was
13 rejected, as were all of the major Democratic amendments.

14 So these show what the bill could have been and what
15 the intentions could have been if the legislature had wanted to
16 expand the suffrage or keep it the way that it was, or to ease
17 it a bit from SB14. But they were all rejected.

18 Q. Picking up on your testimony regarding the rejection of
19 Senator Ellis' amendment, what other evidence were you able to
20 uncover regarding the anticipated effect of SB14, were it to go
21 into effect?

22 A. There were three kinds of evidence that were offered, and
23 particularly in the Committee of the Whole Senate consideration
24 in 2009. One was that the sponsor of the bill, Senator Frasier,
25 said under questioning from the Democrats that he had received

1 some statistics from the Secretary of State's office, and of the
2 last approximately five million registrations in Texas, about
3 12 percent of those people registered without presenting a photo
4 ID. They presented Social Security numbers in order to
5 register. Some of those people may have had photo IDs, some of
6 whom may have had photo IDs that would work under SB14 later.
7 But you've got an idea that there were roughly 800,000 people,
8 which is 12 percent of the five million, that would be affected
9 by this, and if you multiplied that out to get what the --

10 MR. HUGHES: Your Honor, I'm going to object. I don't
11 believe this is disclosed in Dr. Kousser's report. Correct me
12 if I'm wrong, counsel, but we're --

13 THE WITNESS: I believe it was. I can't cite you the
14 page, but I did, I think, include that discussion.

15 MR. HUGHES: It's 100 pages long.

16 JUDGE COLLYER: Yes, we have lots of pages. Why don't
17 you keep going, and then if you discover later...

18 MR. HUGHES: It's withdrawn.

19 JUDGE COLLYER: Okay.

20 MR. DELLHEIM: Thank you, Your Honor.

21 JUDGE COLLYER: I know that Dr. Kousser was in the
22 middle of something. Forgive us, Doctor. Maybe you could
23 reframe another question to get us back on track?

24 MR. DELLHEIM: I will. And this question will go at
25 least in part to a question Judge Tatel asked.

1 BY MR. DELLHEIM:

2 Q. Dr. Kousser, with respect to the evidence before the
3 legislature at the time it considered SB14 in 2011, to what
4 extent was there evidence that the legislature knew or that it
5 didn't know what the impact of SB14 would be on minority voters?

6 A. Well, there was considerable evidence, because the
7 Democrats - particularly minority members - asked again and
8 again for studies of the incidence, the general incidence of
9 people not having photo IDs or other IDs that would be legal
10 under any of the particular bills, and they also asked for the
11 Secretary of State or the DPS to make studies of the racial
12 incidence of those bills.

13 Particularly, the Senate minority leader,
14 Senator Leticia Van de Putte, who is Latina, from San Antonio,
15 asked the Secretary of State's office for a study of the ethnic
16 consequences of the bill. All of these efforts -- and they were
17 made again and again on the Floor. All of these efforts were
18 rebuffed. There was never such a study made, or at least it was
19 not made public at the time of SB14's passage.

20 Q. And as a scholar, what do you infer from the fact that
21 minority legislators requested specific evidence with respect to
22 the impact of SB14 on minority voters, and that evidence was not
23 provided?

24 A. Well, everyone had an idea that there might be an effect on
25 minority voters, because there was testimony at hearings, again

1 in the Committee of the Whole Senate in 2009, by a lot of expert
2 witnesses from the outside. The Brennan Center people in
3 particular said that they had done surveys that showed that
4 minorities were less likely to have such documents.

5 The failure to respond to the inquiry by Democrats who
6 asked for such information convinces me that the sponsors of the
7 bill, the Republican sponsors of the bill, simply didn't want to
8 know - didn't want to let anybody else know, either - what the
9 consequences were. So that seems to me evidence of racially
10 discriminatory intent.

11 Q. Did anyone, any witnesses before the legislature, promise to
12 provide the requested information regarding the potential ethnic
13 or racial impact of SB14?

14 A. I believe Mr. Shorter, who was with the Secretary of State's
15 office, did.

16 Q. And was that information provided?

17 A. No.

18 Q. Dr. Kousser, are you offering any opinion as to any
19 legislator's subjective intent in this case?

20 A. No. The 10 intent factors are based on public information
21 and on public statements and public actions. I don't have
22 anybody on a psychiatrist's couch. I can't find out what they
23 found deep in their heart, and I don't think it would be
24 relevant.

25 Q. Let me ask you another question. You were asked by the

1 court, how do we know whether a legislature's action is -- was
2 triggered by partisan interests or racial interests. As a
3 scholar, do you have to separate them, and is there judicial
4 authority that helps inform your opinion?

5 A. Well, one of the things that's most interesting about that
6 is that from time to time people do separate them. I tried to
7 do so in the Texas redistricting case, but here it's hard to
8 separate them.

9 What's most clear about this sort of bill is, it's not
10 going to have a big impact on middle class white Democrats in
11 Travis County, Austin. They have photo IDs. Or middle class
12 Black and Hispanic Democrats in Houston or San Antonio. The
13 people who are really going to be affected by this are
14 relatively poor people who are quite disproportionately
15 minority.

16 So if it affects Democrats, and it's mostly going to
17 affect their members who are a minority, then it has an effect
18 on minorities, which is disproportionate and I believe intended.

19 Q. And you're familiar with the case of *Garza*. You testified
20 as an expert. Correct?

21 A. Yes. In the *Garza* case there is a very interesting opinion
22 by Judge Kozinski in the appeals court decision, and he has a
23 sort of metaphor about racially discriminatory intent. He says
24 something to the effect that if you're a white homeowner and you
25 sign a racially restrictive covenant because you want to keep

1 the value of your house, and you think the value of your house
2 would diminish if people of color moved into the neighborhood,
3 have you engaged in intentionally racially discriminatory
4 actions. He concluded that you had. I think that's actually
5 quite a good analysis.

6 MR. DELLHEIM: I have no further questions at this
7 time. Thank you, Dr. Kousser.

8 JUDGE COLLYER: Thank you very much. Did any other
9 defendant wish to question this witness?

10 MR. HEBERT: No, Your Honor.

11 JUDGE COLLYER: All right. Did someone from the
12 United States? I'm sorry. I know Texas considers itself
13 sovereign, but that was a bit much.

14 MR. MORTARA: We're all from the United States here.
15 Ms. Spencer is also an Australian, though.

16 JUDGE COLLYER: Well, we won't mention Australia,
17 because I'm having enough trouble between Texas and the
18 United States.

19 Mr. Hughes, if you would, please, on behalf of the
20 great State of Texas.

21 MR. HUGHES: Thank you, Your Honor. Again, I'll need
22 one moment.

23 **CROSS-EXAMINATION**

24 BY MR. HUGHES:

25 Q. Good afternoon, Dr. Kousser.

1 A. Good afternoon, Mr. Hughes.

2 Q. It's kind of like old times here.

3 Now, in your report in this case, and in your direct
4 testimony with Mr. Dellheim, you mentioned a book that you
5 wrote. Right?

6 A. I believe I did.

7 Q. You mentioned the book "Colorblind Injustice." Correct?

8 A. That's correct.

9 Q. And in fact, you put on the screen for the court a
10 demonstrative that you and the Department of Justice created
11 that had 10 different factors that you identify in your book
12 "Colorblind Injustice." Correct?

13 A. That's correct.

14 Q. And those are the factors that you are using. They're like
15 your analytical framework that you're using to get at your
16 opinions in this case. Correct?

17 A. Right.

18 Q. And I want to ask you a few questions about the concluding
19 pages of your book. Okay? And I want to start on page -- let
20 me just put it up on the screen and blow it up. Dr. Kousser,
21 I've got the book here, but I've put a photocopy of a page of
22 the book on the screen.

23 MR. HUGHES: And for Your Honors, for convenience,
24 we've marked this as Exhibit 543.

25 BY MR. HUGHES:

1 Q. Dr. Kousser, you recognize this as a page out of the book
2 that discloses your analytical framework in this case. Right?

3 A. I did not use my analytical framework to analyze *Shaw*.

4 Q. Dr. Kousser, you need to focus on my questions. I'm under
5 very tight time limits --

6 A. Very well.

7 Q. -- and I'm asking you, is this a page, or one of the pages
8 out of the book that you used to disclose your analytical
9 framework in this case?

10 A. This is a page which is not derived from the analytical
11 framework. The analytical framework is described in the book.
12 It is used to analyze --

13 Q. Dr. Kousser, I don't mean to cut you off, but you're not
14 answering my question. Is this a page from the book that you
15 disclosed the analytical framework that you used in this case,
16 yes or no?

17 A. It is a page from the book. At another point in the book I
18 disclose the analytical framework.

19 Q. Now, in this last few pages of the book you talk about a
20 case called *Shaw v. Reno* and its progeny. Right?

21 A. Correct.

22 Q. And *Shaw* against *Reno* was a case, was a 5 /4 U.S. Supreme
23 Court decision authored by Justice O'Connor, joined by
24 Chief Justice Rehnquist, Justices Scalia, Kennedy, and Thomas.
25 Right?

1 A. Yes.

2 Q. And in the concluding paragraphs of your book, you conclude
3 that *Shaw* and its progeny are wrong, as wrong as *Plessy* and as
4 wrong as *Dred Scott*. Right?

5 A. That's what I wrote in 1999.

6 Q. And to be clear - I think everybody knows - but *Dred Scott*
7 was a Supreme Court case that endorsed slavery. Right?

8 A. Yes.

9 Q. And *Plessy* endorsed segregation. Right?

10 A. Yes.

11 Q. And you would agree that both of those are racist opinions,
12 black marks upon our nation. Right?

13 A. Yes.

14 Q. Two of the worst Supreme Court opinions of all time. Right?

15 A. Yes.

16 Q. And at the time that you published your book, you concluded
17 that Justice O'Connor authored, and Chief Justice Rehnquist and
18 Justices Kennedy, Scalia, and Thomas signed their names to, an
19 opinion that was as evil as the U.S. Supreme Court opinion that
20 endorsed slavery and the U.S. Supreme Court opinion that
21 endorsed segregation. Right?

22 A. I did not say evil, I said wrong.

23 Q. But you just agreed *Plessy* and *Dred Scott* are evil opinions.
24 Right?

25 A. But I said *Shaw* was wrong. I think it was empirically

1 wrong, and I spend 467 pages -- this is page 465. I have a
2 whole chapter discussing *Shaw vs. Reno*, I testified in *Shaw vs.*
3 *Hunt*. I have a whole chapter discussing the evidence that was
4 used in *Shaw vs. Hunt*, and I come to the conclusion that it was
5 wrong. It was wrong empirically, and I can discuss that at some
6 length. You don't want to take the time to do it. But I think
7 that Justice O'Connor's opinion --

8 Q. Dr. Kousser, I think again you've gotten way beyond my
9 question. What you wrote in the book was that Justice O'Connor
10 and the other justices that joined the opinion joined an opinion
11 as wrong as the case that endorsed slavery and as wrong as the
12 case that endorsed segregation. That's what you wrote in your
13 book. Right?

14 A. Wrong is not evil. *Plessy* was wrong --

15 Q. Dr. Kousser, I just asked you if you wrote in your book that
16 Justice O'Connor authored and Chief Justice Rehnquist and the
17 other justices we've mentioned joined an opinion that was as
18 wrong as *Dred Scott* and *Plessy*. That's what you wrote in your
19 book. It's on the screen. Right?

20 A. That's correct. That's correct.

21 Q. And I want to look at the very last paragraph of the book.
22 And this is the very last paragraph of the book,
23 "Colorblind Injustice." Right?

24 A. Yes.

25 Q. And the highlighted portion that I have, I'll read it:

1 "When radicals purposely distort the history of those times and
2 the repressive intervening years in an effort to wipe out the
3 legacies of those epic struggles, when they employ colorblind
4 rhetoric in what is actually an attempt to redeem white
5 supremacy once more by deconstructing the Second Reconstruction,
6 it becomes the duty of a historian to set the record (sic)
7 straight." Do you see that?

8 A. Set the story straight.

9 Q. I'm sorry. Do you see that language?

10 A. Yes.

11 Q. And what you're referring to there is the *Shaw v. Reno* and
12 its progeny. Right?

13 A. And other cases. As I discussed in my deposition, I was
14 particularly concerned there with the historical sketch that
15 Justice Scalia has offered in lots of places in which he has
16 said that the history of the United States leads you to believe
17 that the 14th Amendment means no consideration of race
18 whatsoever, not that it means discrimination. It means
19 discrimination -- it has meant in the history of the
20 United States discrimination against people who were black, who
21 were Latino, et cetera, not just any --

22 Q. Dr. Kousser, again, you're not answering my question. I
23 would like to hand you your deposition.

24 MR. HUGHES: May I approach, Your Honor?

25 JUDGE COLLYER: Yes, go right ahead.

1 BY MR. HUGHES:

2 Q. Dr. Kousser, I'm looking at page 51, line 12, which I have
3 opened to that page for you. Do you see that?

4 A. Yes.

5 Q. And do you see at page 51, line 12, I read the paragraph
6 that we've just read together. Right?

7 A. Yes.

8 Q. And then if you flip over to page 52, I say, line 9: "And
9 what you're talking about there is the *Shaw* case. Right?"

10 And you answer: "The *Shaw* case and its progeny." That
11 was your sworn testimony. Right?

12 A. Yes. And on 53 I start discussing Justice Scalia.

13 Q. And the opinion you're expressing at the end of your book,
14 the book that's cited in your report in this case, is that
15 Justice O'Connor authored, and that Chief Justice Rehnquist,
16 Justices Kennedy, Scalia, and Thomas joined an opinion that
17 employed colorblind rhetoric that had the effect of promoting
18 white supremacy. Right?

19 A. That's correct.

20 Q. And you've actually thought about whether the purpose of
21 *Shaw* against *Reno* was to promote white supremacy, haven't you?

22 A. Yes, I think I discuss that in my deposition.

23 Q. And what you said is you think it's possible - your words at
24 the deposition were "up in the air"- that Justice O'Connor's
25 purpose in *Shaw* was to promote white supremacy, but at a minimum

1 you think she should have been aware that it would have that
2 effect. That's what you think. Right?

3 A. That's correct.

4 Q. Now that we've looked at the concluding paragraphs of the
5 book that discloses your methodology in this case, I want to
6 turn to talk about voter ID. And my first question is: Your
7 basic opinion is that the Texas Voter ID law was enacted with a
8 racially discriminatory purpose. Right?

9 A. Right.

10 Q. In fact, it's your opinion that the elected officials in
11 Texas, including every member of the Texas legislature who
12 supported and voted for the Texas Voter ID law, were motivated
13 by racially discriminatory purposes. You think that. Right?

14 A. Correct.

15 Q. And you agree, though, that in the public record, there were
16 race neutral purposes that were identified for the Texas
17 Voter ID law. Right?

18 A. Yes.

19 Q. One of the race neutral purposes that was identified as
20 supportive of Texas Voter ID law was to decrease election fraud,
21 you talked about with the Department of Justice's counsel.
22 Right?

23 A. Right.

24 Q. And another race neutral purpose that was identified as
25 supportive of the Texas Voter ID law was to increase confidence

1 in the electoral process. Right?

2 A. Right.

3 Q. But what you say, in essence, is that these race neutral
4 reasons are all pretextual, and that you have the ability to
5 look behind these supposedly pretextual purposes and determine
6 that what's really going on is a racially discriminatory
7 purpose; in other words, an intent to burden minority voters.
8 Right?

9 A. Correct.

10 Q. And this is not the first time, is it, Dr. Kousser, that you
11 have tried to convince a court that a voter ID law was passed
12 with pretextual purposes in order to impermissibly burden
13 certain voters, is it?

14 A. I think what you're referring to is the fact that I
15 participated in a historian's amicus brief in the *Crawford* case.
16 I'm not sure I would characterize it exactly that way.

17 Q. Well, let's look at that brief, Dr. Kousser. You were
18 pressing it. And what I've got on the screen we've marked as
19 Exhibit 513, that's the historian's amicus brief that you're
20 referring to in the *Crawford* case. Right?

21 A. That's correct.

22 Q. And if we turn to the table of contents, two of the
23 arguments presented in the amicus brief you signed your name to
24 sound familiar. One is: "The evidence strongly suggests
25 Indiana's photo ID law was enacted with partisan intent to

1 burden certain voters." That was an argument you signed your
2 name to in *Crawford*. Right?

3 A. Yes. But that was not the part of the brief that I
4 primarily was responsible for.

5 Q. But it's in the brief you signed your name to?

6 A. It is a brief that I signed.

7 Q. And the other part that I guess bears more on what you did
8 there and what you're doing here, is that the reasons given for
9 Indiana's photo ID law are not credible. Right?

10 A. Yes. Again, that's not the part of the brief that I
11 particularly worked on. The part of the brief that I
12 particularly worked on is the part that is cited in
13 Justice Souter's dissent, those pages.

14 Q. But you signed your name to a brief that presented these two
15 arguments. Right?

16 A. That's correct. That's correct.

17 Q. And in fact, the Supreme Court disagreed with the point of
18 view set forth in this brief, and upheld Indiana's voter ID law,
19 citing as valid purposes decreasing fraud and increasing
20 confidence in the electoral process. Right?

21 A. They did.

22 Q. Same two reasons that the Texas legislature cited for SB14.
23 Right?

24 A. I believe that there was no intentional discrimination
25 claim, either partisan or racial, in the *Crawford* case.

1 Q. Dr. Kousser, you've got to focus on my questions.
2 Mr. Mortara has put me on a short leash on the time limit. My
3 question is: The reason that the Supreme Court said that the
4 Indiana statutes were valid - decreasing fraud, increasing
5 confidence in the electoral process - are the same race neutral
6 reasons cited by the Texas legislature in this case. Right?

7 A. Yes. And I discussed that in my earlier testimony.

8 Q. And of course you think *Crawford* was wrongly decided.
9 Right?

10 A. I discussed this in my deposition. I think that there
11 should have been -- it should have been brought differently. It
12 should have had an intentional discrimination claim, it should
13 have waited until they had plaintiffs who were denied the right
14 to vote, and I think that Justice Stevens should have put more
15 emphasis on whether there was current emphasis -- there was
16 current evidence of voter fraud.

17 So I agree with you, I think particularly in the last
18 part of it, that it was wrongly decided. I did not like the
19 *Crawford* decision in that regard.

20 Q. And you recognize that the Supreme Court found that
21 detecting fraud was a valid interest, even though there was no
22 evidence in the record in that case of any in-person voter fraud
23 in Indiana. You understand that. Right?

24 A. But this is a different case. As I said before --

25 Q. Dr. Kousser, you've got to answer the question --

1 A. Yes.

2 Q. -- that I ask you.

3 A. The difference in this case --

4 Q. It's not a question about whether there's a difference, it's
5 whether the Supreme Court found that detecting fraud was valid
6 on a record with no evidence of in-person voter fraud. It's a
7 yes or no question.

8 A. They found that.

9 Q. Now let's turn to another part of your opinion. I think you
10 mentioned this with Mr. Dellheim, and that was you mentioned
11 Attorney General Abbott's efforts to investigate and prosecute
12 election fraud. Right?

13 A. That's not how I would characterize them. But yes.

14 Q. Well, an important part of your overall opinion in this case
15 is your opinion that the Attorney General of Texas had a highly
16 visible investigation to find in-person voter fraud, and that
17 that investigation failed. Right?

18 A. Yes.

19 Q. And basically, your testimony is that the Attorney General,
20 through this investigation, canvassed the State of Texas trying
21 to find voter fraud, and in particular in-person voter fraud, in
22 order to drum up political support for a Voter ID Bill.

23 Correct?

24 A. Correct.

25 Q. And that's a theme that you highlight in your report, and I

1 believe for the record the report is Defense Exhibit 548. I
2 would like to show you a page out of your report, Dr. Kousser.
3 This is paragraph nine of your report, and this is kind of in
4 the introductory paragraphs to your report, where you're
5 summarizing what the ultimate contents of the substantive parts
6 of the report will be. Right?

7 A. Right.

8 Q. Okay. And in paragraph nine you move past the description
9 of the section that is going to set forth the facts, and you
10 say, "I then turn to the section of the paper that concentrates
11 more directly on motive." Right?

12 A. Well, they're facts about motive, but yes.

13 Q. And when you're describing the section of the report that
14 discloses your paper -- or your opinion about motive, you say
15 that -- you're focusing first on the evidence that was offered
16 to support and undermine the central proposition of proponents
17 of voter ID laws, that they are aimed at actual, well
18 documented, in-person voter fraud. "Texans made unparalleled
19 efforts to uncover such fraud. The Attorney General's Office
20 conducted an expensive six-year-long, high visibility campaign
21 to find it." Do you see that?

22 A. Yes.

23 Q. And so what you're talking about there is that you say, "The
24 Attorney General's Office conducted an expensive six-year-long
25 campaign to go and actually find in-person voter fraud. That's

1 your testimony. Right?

2 A. To go -- as I said during the direct testimony, to hold
3 hearings, hold meetings, to inform local officials about what it
4 took to look for voting fraud, and to I think stimulate
5 investigations that he could pursue on voting fraud.

6 Q. Dr. Kousser, let's just focus on what's on the screen. What
7 you're talking about in this paragraph on the screen is that you
8 say that the Attorney General's Office conducted an expensive
9 six-year-long, high visibility campaign to find it. You see
10 that language. Right?

11 A. Yes.

12 Q. And the antecedent to it, and the only antecedent to it in
13 this paragraph, is "in-person voter fraud." Right?

14 A. Yes.

15 Q. Now, I want to show you what was marked at your deposition
16 as Exhibit 7, but it's now Trial Exhibit 547. And this is --
17 let me just ask you if you recognize it. This is a news column
18 put out by the Attorney General that's the first public
19 announcement of what you've referred to as the
20 Attorney General's investigation to find in-person voter fraud
21 in order to generate support for photo ID. Right?

22 A. Yes. There are various forms of this particular article.
23 One is a weekly column, but they're substantially similar.

24 Q. And this is the one you cited in your report. Right?

25 A. Yes.

1 Q. Okay. And this exhibit, 547, the document that you say is
2 the Attorney General's public announcement to find in-person
3 voter fraud in order to build support for photo ID, it does not
4 mention in-person voter fraud, does it?

5 A. No. And I said that particularly in my report.

6 Q. And it does not mention that the Attorney General is looking
7 to find in-person voter fraud, does it?

8 A. It doesn't say he's looking. He's going to hold all these
9 meetings and tell local officials how to find voting fraud, and
10 he is going to prosecute -- if you go on in the document, he is
11 going to increase the number of prosecutions for voting fraud.

12 Q. There's not one mention of in-person voter fraud in this,
13 what you say is the announcement of the investigation to find
14 in-person voter fraud, is there?

15 A. No.

16 Q. And in fact, all of the examples of election fraud given in
17 this column have to do with other kinds of election fraud other
18 than in-person voter fraud. Right?

19 A. Yes.

20 Q. And the news column that you say is the public announcement
21 of the Attorney General's investigation to find in-person voter
22 fraud to drum up political support for photo ID does not mention
23 photo ID, does it?

24 A. No. In the historical context, as I discussed --

25 Q. It's just a yes or no question, Dr. Kousser. It does not

1 mention photo ID, does it?

2 A. It does not mention photo ID.

3 Q. And it doesn't mention -- and I'm not trying to be rude,
4 Dr. Kousser. But if you have explanations, the Department of
5 Justice can get up here and you can give all the explanations on
6 their clock that you want. Okay?

7 A. Fine.

8 Q. And the article also does not mention any reforms to
9 election laws, does it?

10 A. No.

11 Q. And what the Attorney General lists in this announcement
12 that you say was to build public support for voter photo ID by
13 fighting in-person voter fraud is actually a recitation of
14 instances of what the Attorney General states are actual past
15 examples of fraud. Right?

16 A. Yes.

17 Q. And you haven't disclosed in either of your reports any
18 opinion that calls into question the validity of any of the
19 specific instances of voter fraud the Attorney General
20 identified in this March 2006 column. Right?

21 A. I think that's correct.

22 Q. And in fact, I think you would say you agree that if the
23 Attorney General was actually trying to build public support for
24 photo ID - even though that's not mentioned, nor in-person voter
25 fraud mentioned in this announcement - your testimony would be

1 that the Attorney General would have promoted this announcement
2 to the public so that the public would hear about the
3 announcement and he could start to build support for photo ID.
4 You would agree, if what you say is true, that's what the
5 Attorney General would be doing. Right?

6 A. He did.

7 Q. And --

8 A. He did. His weekly column, which he put out as a form of
9 this, was run in various newspapers. For example, it was run in
10 the *Ft. Worth Star Telegram*. I don't know which other
11 newspapers it was run in. But it was a weekly column and it was
12 picked up by some newspapers. The *Dallas Morning News* had an
13 article on this, the El Paso newspaper had an article on this at
14 the time. So it got out there.

15 Q. You know that he didn't even issue a press release, it was
16 just a news column on the web site. Right?

17 A. We discussed this in the deposition. It is not mentioned
18 among his press releases.

19 Q. Now, Dr. Kousser, I think during -- I know during your
20 direct testimony that you talked with the Department of Justice
21 about rule change relating to the chubbing practice. Do you
22 recall that testimony?

23 A. Yes.

24 Q. And I think you know that the rule change that changed the
25 chubbing practice in 2011 was part of a larger package of rule

1 changes that received essentially unanimous support from the
2 members of the Texas House. Right?

3 A. Yes.

4 Q. And I think you suggested that there was no -- that because
5 there were so many Republican members of the House, that it
6 wouldn't have made any sense for the Democrats to oppose the
7 chubbing rule. You suggested that. Right?

8 A. Yes.

9 Q. But you haven't disclosed in either of your reports any
10 statement in the legislative record that that's what was going
11 on, have you?

12 A. No.

13 Q. Now, part of the narrative that you provide in your
14 declaration, your report to the court, concerns the changes that
15 occurred after the Republican wave election in 2010. Right?

16 A. Correct.

17 Q. In fact, I think you say the wave election was one thing
18 that helped -- the 2010 wave election was one thing that helped
19 Republicans pass the Texas Voter ID law. Right?

20 A. Yes.

21 Q. And I would like to show you a part of your report, which
22 again is D-548. You recognize this as a page from your report,
23 right, Dr. Kousser?

24 A. Yes.

25 Q. I'll make it easier for you. In paragraph 53 you talk

1 about -- you say, "Smith was ousted from the chairmanship" --
2 and that's a reference to Todd Smith. Right?

3 A. Yes.

4 Q. And he had been the chairman of the House Elections
5 Committee in 2009, when the Voter ID Bill died in the House.
6 Right?

7 A. Yes.

8 Q. So you say, "Smith was ousted from the chairmanship in favor
9 of a more dependable conservative, Patricia Harless, of Spring,
10 a rapidly growing, overwhelmingly white area on the northern
11 border of Harris County." Do you see that?

12 A. Yes.

13 Q. That's part of the narrative that you're providing in
14 support of your opinions in this case. Right?

15 A. Yes.

16 Q. So it's your view that you're expressing here that
17 Patricia Harless became the chair of elections for 2011. Right?

18 A. Yes.

19 Q. And what I'm showing you here, Dr. Kousser, we've marked
20 Exhibit 534 that shows the chairs of the different committees
21 for the 2011 Texas House. Do you see what I'm showing you?

22 A. Yes.

23 Q. And if we go down to elections, you see that there?

24 A. Yes.

25 Q. And Patricia Harless was not the chair of the elections

1 committee in 2011, was she?

2 A. Seems not. I was wrong. Sorry.

3 Q. The other thing you said was that she was from an
4 overwhelmingly white district outside of Houston. Right?

5 A. My -- I tell my students not to trust Wikipedia. I should
6 not have.

7 Q. So you don't know whether she's from an overwhelmingly
8 white --

9 A. I looked at Spring -- the white proportion of Spring itself,
10 and Wikipedia said that it was overwhelmingly white. So that's
11 what I took it from.

12 Q. Now, do you know that Patricia Harless is Representative of
13 House District Number 126?

14 A. I think I read that in the deposition.

15 Q. So you disagree with me on that, that she's the
16 representative from 126?

17 A. No, no, I think you're correct. I think I read that at the
18 deposition.

19 Q. And I think you've already discussed it at length here
20 today, that you have prior experience in Texas litigation
21 regarding the Voting Rights Act related to redistricting.
22 Right?

23 A. Yes.

24 Q. And as part of that, you've had access to demographic data
25 about the various districts in Texas. Right?

1 A. I did.

2 Q. But you didn't look that up before you said that
3 Patricia Harless was from an overwhelmingly white district, did
4 you?

5 A. I did not look up the ethnic composition of her district.

6 Q. And what I'm showing you here, I'll blow it up on the
7 screen -- and you recognize this, don't you, from your
8 redistricting experience, as the kind of demographic information
9 that's available about the various House districts?

10 A. Yes.

11 Q. And what you see here for House District --

12 JUDGE WILKINS: For the record, identify what this is.

13 MR. HUGHES: Yes, Your Honor. This is Exhibit 558, and
14 what this is is demographic information concerning House
15 District 126 for the district that was in place during the 2010
16 elections that would have elected Representative Harless to the
17 House.

18 BY MR. HUGHES:

19 Q. What you see there over on the right --

20 JUDGE COLLYER: Wait, wait, wait, the witness has to do
21 this.

22 MR. HUGHES: Now I'm going to shift to ask the
23 question.

24 BY MR. HUGHES:

25 Q. So now, Dr. Kousser, it's back to you and me. And you see

1 on the right over there where it says A, B, H, and so forth?

2 A. Yes. This is population. I would look at CVAP or voting
3 age population, by preference.

4 Q. Thank you, Dr. Kousser. If you see over here on the left,
5 VAP, that's voting age population. Right?

6 A. Yes.

7 Q. And what we see is that in what you said was an
8 overwhelmingly white district, in fact the Anglo voting age
9 population is only 42.9 percent. Right?

10 A. I did not mean her district, and I should have checked the
11 district composition before making the statement.

12 Q. But what you said in the report was she's from an
13 overwhelmingly white district. Right?

14 A. No, I said an overwhelmingly white area. I meant Spring. I
15 looked up Spring in Wikipedia and it was overwhelmingly white.
16 So I should have looked up the districts. I apologize.

17 Q. Now I want to look at another part of your report, D-548.
18 I'll put it on the screen. And in your report you discuss the
19 notion - I think you already discussed it today - that there
20 were some minority members of the Texas legislature that voted
21 for Senate Bill 14. Do you recall that discussion?

22 A. Yes.

23 Q. But what you say is that their votes don't do anything to
24 convince you that the law was not passed with a racially
25 discriminatory purpose, because I think your analysis is they

1 don't represent -- they're not the minority-preferred candidate
2 of choice from their district. Right?

3 A. Yes. They were elected by Anglo votes, and their political
4 futures are tied up with Anglo voters, not Latino voters, not
5 Black voters, not Asian-American voters.

6 Q. But what you do say is that if there were evidence that
7 representatives that represented minority communities voted for
8 SB14, that that fact could partly undermine a case for
9 discriminatory intent. Right?

10 A. I think I used the word "legitimate representatives."

11 Q. And I think the way that I understand your approach in this
12 area to figure out whether a representative is a legitimate
13 minority candidate of choice is you would look at racially
14 polarized voting data, demographic voting data, and see if that
15 candidate was receiving the majority of minority votes in their
16 district. Right?

17 A. Yes.

18 Q. And you say if there was a representative that satisfied
19 that legitimacy test, so to speak, that voted for SB14, then
20 that fact could partly undermine a case for discriminatory
21 intent. Right?

22 A. Yes.

23 Q. But you didn't disclose to the court in your declaration
24 that there in fact was a minority candidate of choice that voted
25 for SB14, did you?

1 A. Do you mean Representative Pena?

2 Q. No, sir. Do you know who Representative Pickett is?

3 A. I do not remember Representative Pickett.

4 Q. So you're not aware that Representative Pickett represents
5 District 79 in El Paso?

6 A. I believe he's a Democrat, he's a white Democrat.

7 Q. And are you aware -- now, again, you had evidence that --
8 racially polarized voting data that you could have looked at.
9 Right?

10 A. I could have looked at it for Pickett. I did not.

11 Q. You could have figured out whether Pickett was the minority
12 candidate of choice. Right?

13 A. He's a Democrat, he's in El Paso, I assume he's a minority
14 candidate of choice. But he's white.

15 Q. But I thought you just told me that the legitimacy test of a
16 representative being a minority candidate of choice was just
17 that they were supported by a majority of minority voters in
18 their district. That's what you told me. Right?

19 A. Yes.

20 Q. And are you now saying that the color of the skin of the
21 representative is the legitimacy test for whether or not a
22 candidate is a minority candidate of choice?

23 A. It would make it -- it would tend to undermine the case a
24 bit more if he were in fact a minority.

25 Q. But that doesn't count for Representative Pena or Aliseda.

1 Right? It only matters if they're Democrats. Right?

2 A. If both of those things are true, then it helps to undermine
3 the case for intentional discrimination.

4 Q. But you would never take the position, ever, in a
5 redistricting case that a white candidate that was preferred by
6 a majority of minority voters wasn't the minority candidate of
7 choice. You would not take that position, and you in fact have
8 taken the contrary position time and again, haven't you?

9 A. Generally I think I've tried to take the position that
10 minorities prefer - other things being equal - to elect minority
11 candidates of choice, but there are certainly instances in which
12 it's the case that Democrats, white Democrats, can be minority
13 candidates of choice. It depends upon the circumstances. I
14 will certainly grant your position here.

15 Q. So you agree that Joe Pickett was a minority candidate of
16 choice for his district. Right?

17 A. He was.

18 Q. And you know he voted for SB14. Right?

19 A. I remember that now.

20 Q. But you didn't disclose that to the court in this discussion
21 in your report. Right?

22 A. I was thinking of minority -- members who were minorities
23 themselves.

24 Q. Now, we've heard a fair bit of discussion about newspapers
25 today, Dr. Kousser.

1 JUDGE COLLYER: Excuse me. Can I ask another question?
2 No, never mind. I won't ask. Sorry. No, you went close to
3 another case that I sort of know that record, and I don't want
4 to confuse things. Keep going.

5 MR. HUGHES: After 5:30, I'm willing to stand here and
6 talk about the case.

7 JUDGE COLLYER: Right. After 5:30 we can have the
8 conversation. Right. As long as everybody else stays.

9 BY MR. HUGHES:

10 Q. Dr. Kousser, we've heard some testimony about newspaper
11 articles today. In fact, you cite newspaper articles numerous
12 times in your report. Right?

13 A. Correct.

14 Q. And you also cite a number of editorials in your report.
15 Right?

16 A. Yes.

17 Q. And the reason that you cite those editorials, I gather, is
18 because you think they're important evidence for the court to
19 consider on the issues that you're considering in this case.
20 Right?

21 A. They're indicative of strands of public opinion, and that's
22 important in my -- in this particular case, yes.

23 Q. So, for example, I think I counted you cited, I think, three
24 *Dallas Morning News* editorials that were opposing voter ID in
25 your report. You would agree with that. Right?

1 A. I haven't counted them, but I agree with that.

2 Q. And you've cited a number of other editorials from
3 newspapers around the state that oppose voter ID as part of the
4 evidence that you are marshaling in support of the conclusion
5 that you've reached that SB14 was passed with a racially
6 discriminatory intent. Right?

7 A. Yes.

8 Q. Now, one thing that you didn't disclose was a *Dallas Morning*
9 *News* editorial that addressed the exact question you're trying
10 to answer here, which is whether or not the Texas legislature
11 was acting with a racially discriminatory purpose when it
12 enacted SB14. Right? You didn't cite that?

13 A. I'm not sure what you have in mind.

14 MR. HUGHES: This is Plaintiff's Exhibit 37, for the
15 record.

16 BY MR. HUGHES:

17 Q. And you see, Dr. Kousser, this is a *Dallas Morning News*
18 editorial? Do you see that?

19 A. It's June 19th, 2012. I don't think I cited anything that
20 late.

21 Q. Dr. Kousser, I think what you're seeing is the date we
22 printed it.

23 A. I'm sorry, I apologize.

24 Q. It's actually published, if you see right here where I'm
25 highlighting, April 19, 2012. Do you see that?

1 A. Yes. I'm not sure I cited anything that late, but...

2 Q. But you didn't cite this. Right?

3 A. No.

4 Q. And I took -- your rebuttal report comes after April 19th.
5 Right?

6 A. Both of the reports come after April 19th, but the story is
7 over for me, pretty much, after the passage of SB14.

8 Q. So what you see here is, the title of the editorial is,
9 "Abbott is Right, Holder is Wrong." Right?

10 A. Yes.

11 MR. HUGHES: If the court would just take judicial
12 notice of that, we could all go home.

13 BY MR. HUGHES:

14 Q. But let's look at what the article has to say.

15 JUDGE COLLYER: Do you want us to take judicial notice
16 of the fact that that's the opinion of the *Dallas Morning News*?

17 MR. HUGHES: I was more looking for the truth of the
18 matter.

19 JUDGE COLLYER: Oh, I see.

20 BY MR. HUGHES:

21 Q. And you see here in the editorial it says, "The Texas Voter
22 ID law, regardless of how you feel about it, was modeled on the
23 one that was passed in Indiana ruled constitutional by the
24 Supreme Court. In other words, it was not the product of a
25 cabal working with ill intent behind the scenes." Do you see

1 that?

2 A. Yes.

3 Q. So that's the *Dallas Morning News* -- I mean, you cited
4 editorials where they say that, we don't think that SB14 is a
5 good idea and it should get voted down. That's what you cite in
6 your report. Right?

7 A. Yes.

8 Q. And here we have an article that actually addresses the
9 issue that you're addressing in this case, which is whether
10 there was an ill intent behind the Texas Voter ID law, and in
11 fact the newspaper that opposed SB14 concludes it was not the
12 product of a cabal working with ill intent behind the scenes.
13 Do you see that?

14 A. Yes. I'm not sure that I would disagree with that, a cabal
15 working with ill intent behind the scenes. They were pretty
16 open about what they wanted to do.

17 Q. Then the article goes on to say, "Passing laws identical to
18 Indiana's is a national strategy of proponents of voter ID.
19 Republicans are driving this issue, and to no one's surprise,
20 Texas followed the vetted model." Do you see that?

21 A. Yes.

22 Q. And you don't disagree that that's what happened, do you?

23 A. I agree it was not to anybody's surprise, after they got an
24 overwhelming majority, that they passed the bill.

25 Q. And another part of your opinion that you're offering in

1 this case is about the process, and the *Dallas Morning News*
2 editorial goes on to say -- and I don't need to highlight
3 everything. The second point is equally important. The
4 legislative --

5 JUDGE COLLYER: Wait. I hate to say anything. There's
6 no objection over here. This is in evidence. The expert didn't
7 rely on it, it comes after his report. It is really just an
8 editorial -- with all respect to the *Dallas Morning News*, it's
9 really just an editorial from Dallas. You know, what really
10 matters, why don't we stop this and move on?

11 MR. HUGHES: Thank you, Your Honor.

12 JUDGE COLLYER: You've made your point, it's made well.
13 You got it?

14 MR. HUGHES: Thank you, Your Honor.

15 JUDGE COLLYER: Okay.

16 BY MR. HUGHES:

17 Q. Dr. Kousser, one last topic before we finish our time
18 together, and that is, in addition to the two race neutral
19 reasons that we talked about earlier that were given in support
20 of the voter ID law - detecting fraud, increasing confidence in
21 the electoral process - an additional reason that was given, a
22 purpose identified as supportive of the Texas Voter ID law, was
23 that it was a popular law that was responsive to constituent
24 demand. Right?

25 A. That was in Professor Shaw's report. Yes.

1 Q. I think that's also part of what you agreed in your
2 deposition was part of the reason given on the legislative
3 record. Right?

4 A. There was discussion of this in the legislative record, yes.

5 Q. And I would like to show you a quote from another expert in
6 this case to see whether you agree with it. This is Exhibit 24,
7 for the record, an article by Professor Ansolabehere. And let
8 me just read this portion to you, Dr. Kousser. Before I do, you
9 know who Dr. Stephen Ansolabehere is. Right?

10 A. Yes.

11 Q. And he is in fact the other Department of Justice expert
12 witness in this case. Right?

13 A. Yes.

14 Q. And what he says is, "Perhaps the most surprising
15 demographic or political comparison arose with race, and the
16 surprise was the lack of division. Over 70 percent of whites,
17 blacks, and Hispanics support the requirement. Black and
18 Hispanic voters did not express measurably less support for
19 voter ID requirements than whites. Such findings suggest the
20 Congressional Black Caucus and the Democratic Party leadership
21 may have been wholly out of step with the analogous segments of
22 the electorate on this issue." Do you agree with that
23 statement?

24 A. No.

25 MR. DELLHEIM: Objection, Your Honor.

1 JUDGE COLLYER: What's the objection? Hold on one
2 minute.

3 MR. DELLHEIM: Your Honor, I'm objecting based on the
4 misleading nature of the question. The quote is with respect to
5 the Help America Vote Act.

6 MR. HUGHES: I think the quote speaks for itself. It's
7 about voter ID requirements. It says right there.

8 JUDGE COLLYER: In any event, the quote is slightly out
9 of context. The question has been asked and answered. The
10 record will note it's slightly out of context, but it's been
11 asked and answered. How is that?

12 MR. HUGHES: I think the document will speak for itself
13 with regard to context.

14 JUDGE COLLYER: Oh, Mr. Hughes.

15 MR. HUGHES: I hope.

16 JUDGE COLLYER: Go on.

17 BY MR. HUGHES:

18 Q. Now, Dr. Kousser, you know that the Texas surveys that
19 Professor Shaw discloses in his report show not only the surveys
20 he conducted himself, but the other surveys that had been
21 previously done by others that he cited show similar levels of
22 public support for voter ID amongst Texans. Right? You saw
23 that in his report?

24 A. I have a section of my second report which responds to that
25 specifically, and one of the things that I found is that the

1 support, particularly among minorities, for such a bill varied
2 from poll to poll.

3 For example, in one poll --

4 Q. Dr. Kousser --

5 A. -- as I pointed in the report --

6 Q. Dr. Kousser --

7 A. As I pointed out in the report --

8 Q. Dr. Kousser, you've got to answer my question, which was not
9 about your report, it was about the contents of Professor Shaw's
10 report. And all I'm asking you is if you're familiar with the
11 report - which you obviously are, since you responded to it -
12 and that you would agree with me that the polls identified in
13 that report show similar levels of public support for voter ID
14 in Texas. You would agree with that?

15 A. I do not agree with that. In one poll, as I was saying,
16 only 44 percent of Hispanics supported voter ID. That was the
17 only poll that had a cue that said that the bill might affect
18 Hispanics. If there had been, as I discussed there, other cues
19 that went to African-Americans, that were more skeptical of the
20 idea that there was fraud in elections, that used the catch
21 phrase "voter suppression" that Democrats used, just as it used
22 the catch phrase "voter fraud," then the results I think would
23 have been different. But they were not all, anywhere near,
24 70 percent.

25 Q. Just let me see if we can reach agreement. You don't

1 dispute that there are polls, surveys of Texas voters, including
2 Hispanics and African-Americans, that show greater than
3 50 percent support amongst those groups in Texas. There are
4 some polls that show that. We could at least agree on that.
5 Right?

6 A. There are some polls that show that, there are some polls
7 that do not.

8 Q. You've just been criticizing some of those polls, but you
9 told me in your deposition, you're not a survey expert and
10 you've never conducted a survey. Right?

11 A. That's correct.

12 Q. You still stand by that. Right?

13 A. Yes.

14 Q. Now, in your analytical framework, it is possible that even
15 if a majority of Hispanics in Texas want a photo voter ID law to
16 pass, that you could nevertheless conclude that such a law has a
17 racially discriminatory purpose? That's possible in your
18 theoretical framework. Right?

19 A. It is possible, depending upon what else was the case in the
20 historical record.

21 Q. Now let's talk about a couple of things that you said about
22 the popularity of voter ID. One of the things you said is, we
23 shouldn't worry about these poll results -- or we should ignore
24 them because you have a poll from the 1940s that shows that poll
25 taxes were popular. Right?

1 A. I'm sorry, I did not say that we should ignore them, I said
2 that the fact that a majority is in favor of a particular law
3 does not mean that the law is devoid of racial intentions, and
4 that that majority may be racially inclined. So I used the only
5 thing I could find in the Gallup surveys, which was a survey on
6 the poll tax, and it looked at seven states which had still the
7 poll tax - including Texas at that point - and there was
8 overwhelming support for the poll tax among the public in those
9 states. It doesn't mean that -- just because a majority
10 supports something doesn't mean that there's no racial intent in
11 the passage, or continuation of that.

12 Q. Now, Dr. Kousser, you would agree with me that that you
13 would be astonished if there had been any minority support for
14 the poll tax. That's what you told me in your deposition.
15 Right?

16 A. Yes.

17 Q. And so when you cite the poll tax example, you're citing
18 something that was presumably popular with Anglos but not with
19 minorities. Right?

20 A. Yes.

21 Q. And if the evidence -- if the evidence in this case is that
22 a majority of Hispanic and African-American Texans are in favor
23 of voter ID, that's a different scenario than the poll tax
24 scenario. Right?

25 A. It's a different scenario. But I discussed quite

1 explicitly, as a result of reading Professor Shaw's report, that
2 the model of legislative action that he presents implicitly
3 which says that there is this autonomous public opinion out
4 there - not formed by anybody else, but just floating out
5 there - and the legislators see it and respond to it, that's
6 naive. And I went through the evidence quite extensively to try
7 to show how that public opinion was created.

8 So that was my response, and that's the fuller
9 response.

10 Q. And that's what I want to talk to you about right now,
11 Dr. Kousser. And that is, what you say is that the -- stepping
12 back from voter ID for a minute, as a matter of theory that you
13 believe is correct, that elite politicians, by staying on
14 message and being disciplined, can gin up public support for
15 policies that benefit the elite politicians but not necessarily
16 voters. That's a fair summary of what's in your rebuttal
17 report. Right?

18 A. They can in some instances. Sometimes they fail. In this
19 instance I think they succeeded.

20 Q. And before we get to voter ID, that general political
21 theory, that you see elite politicians, by staying disciplined,
22 can gin up public support for policies that benefit them but not
23 voters, that's a party neutral theory. It could apply to
24 Democrats or Republicans. Right?

25 A. Yes.

1 Q. And now stepping into how you've applied it in this case,
2 what you say is that the public support for voter ID in Texas
3 was manipulated by Republican politicians by going out and
4 talking about it and building up public support for voter ID.
5 Right?

6 A. Yes.

7 Q. But you agree that during the entire -- you agree that
8 there's been a long, pretty contentious debate about voter ID
9 amongst Republicans and Democrats in Texas. Right?

10 A. Yes.

11 Q. And since 2005 until now, that debate has gone on. Right?

12 A. Yes.

13 Q. And the Democrats, they've gotten their message out, calling
14 voter ID things like poll tax, and suggesting its's going to
15 disenfranchise minorities. That's reported, even reported in
16 your report, in various media accounts. Right?

17 A. They try.

18 Q. In fact, many of the state's biggest newspapers have come
19 out against voter ID. Right?

20 A. Correct.

21 Q. But what your testimony is, your opinion in this case, is to
22 the extent that Democrats, Hispanics, and blacks in Texas are in
23 favor of a photo voter ID law, that the political support
24 amongst those groups was the result of manipulation by
25 Republican proponents of voter ID. That's your opinion. Right?

1 A. Yes.

2 MR. HUGHES: No further questions.

3 A. And you ask how that can be done. Why did Republicans
4 succeed so well --

5 BY MR. HUGHES:

6 Q. Dr. Kousser, it was a yes or no question. You've answered
7 my question. You can take up the response on the Department's
8 time. Thank you.

9 JUDGE COLLYER: Thank you, sir. Is there any redirect?

10 MR. DELLHEIM: Just briefly, Your Honor.

11 **REDIRECT EXAMINATION**

12 BY MR. DELLHEIM:

13 Q. Dr. Kousser, do you understand *Crawford* to approve of any
14 voter ID bill, even one that is racially discriminatory?

15 A. No.

16 Q. With respect to the Attorney General's public campaign in
17 response to his announcement that there was an epidemic of voter
18 fraud in Texas, how much did they spend on that campaign?

19 A. I think they spent about \$700,000.

20 Q. With respect to the racial composition of Spring, Texas --

21 MR. DELLHEIM: Can we bring up Exhibit 582, please?

22 MR. HUGHES: If I may object. My objection is that the
23 report relates to the district that Representative Harless was
24 elected to in 2010. I believe what's being shown on the screen
25 relates to a district that was drawn in the 2011 redistricting

1 process, and it's not an apples to apples comparison.

2 JUDGE COLLYER: Oh, wow. This is from the Western
3 District of Texas?

4 MR. HUGHES: No, I'm sorry, this is the legislative
5 plan that was adopted by the Texas legislature redrawing 126,
6 not what she was elected out of in 2010.

7 JUDGE COLLYER: I see. Okay. Okay, I got it.

8 MR. DELLHEIM: And that is correct, and this plan I
9 think shows that it was in fact -- that it is in fact
10 overwhelmingly majority white as we sit here today.

11 JUDGE COLLYER: Now wait a minute. Hold still. And
12 what -- does Dr. Kousser know which one he relied upon? Because
13 it might not be correct -- forgive me. It might not be correct,
14 Mr. Hughes, but it might explain his statement. So -- although
15 I thought he didn't look at the district, actually.

16 MR. HUGHES: Yeah, I kind of think that's another
17 reason it's not appropriate --

18 JUDGE COLLYER: Kind of think that's another reason.
19 But you have to understand the difference here. This is not a
20 district that -- is it in place as a result of --

21 MR. HUGHES: No. No one has ever been elected out of
22 the district --

23 JUDGE COLLYER: Well, wait a minute. What did the
24 Western District of Texas do when it drew the map that is
25 currently going to elections?

1 MR. HUGHES: That I don't know, with respect to 126,
2 but I'm told it's definitively different because it's
3 Harris County, which got changed.

4 JUDGE COLLYER: Oh, okay. So nobody has ever been
5 elected out of this particular design?

6 BY MR. DELLHEIM:

7 Q. Dr. Kousser, what's your understanding of the racial
8 composition of Spring, Texas?

9 A. My understanding is that Spring itself, not the
10 District 126, but that Spring itself is overwhelmingly white.

11 JUDGE COLLYER: Spring is a community, I take it?

12 THE WITNESS: Spring is a community.

13 BY MR. DELLHEIM:

14 Q. And when you opined that the Texas legislature acted with
15 discriminatory purpose, I think I heard your testimony to be
16 that every member of the body voted -- who voted in favor of
17 SB14 voted with a discriminatory purpose. Is that correct?

18 A. Yes.

19 Q. Would you explain that, please?

20 A. They had a self-interest as Republicans in passing a bill
21 which helped the Republican Party by discriminating against the
22 people who were most vulnerable, making it most likely that they
23 would not be able to vote among the Democratic electorate. And
24 those were minorities.

25 Q. And to what extent, if any, do your opinions hinge on a

1 finding of racial animus for any of the members who voted in
2 favor of SB14?

3 A. Not at all. I've been against a racial animus criterion for
4 racially discriminatory intent for a long time. I have a
5 discussion in another part of "Colorblind Injustice," and I do
6 think Judge Kozinski's opinion on that is quite persuasive.

7 Q. And would you agree with me that the probative value of a
8 poll in this case depends on the validity of that poll?

9 A. Indeed, yes.

10 MR. DELLHEIM: I have no further questions. Thank you,
11 Your Honor.

12 JUDGE COLLYER: Thank you, sir. Yes?

13 MR. HEBERT: Your Honor, I have two questions on
14 redirect.

15 JUDGE COLLYER: All right. This is Mr. Hebert,
16 Judge Tatel.

17 MR. HEBERT: Yes, I'm sorry. Mr. Hebert representing
18 the Kennie intervenors.

19 **REDIRECT EXAMINATION**

20 BY MR. HEBERT:

21 Q. Dr. Kousser real quick. In all of the review of legislative
22 history and other public records and all the rest that you
23 looked at, did you uncover any evidence that those supporting
24 SB14 claimed that it was being done to achieve a partisan gain?

25 A. There was no discussion of that by Republicans at all. No

1 claims.

2 Q. In the book "Colorblind Injustice" that we've heard so much
3 about today, did that win any awards?

4 A. It won two awards. It was co-winner of the Lillian Smith
5 award from the Southern Regional Council, and the Ralph Bunche
6 award from the American Political Science Association.

7 Q. Thank you.

8 MR. HEBERT: That's all I have.

9 JUDGE COLLYER: All right, then. Thank you very much,
10 Dr. Kousser.

11 THE WITNESS: Thank you very much. It's good to see
12 you again.

13 JUDGE COLLYER: It's been good to see you. Thank you,
14 sir.

15 All right. Do you have another witness, sir?

16 MR. ROSENBERG: Yes. Ezra Rosenberg from Dechert, LLP
17 acting right now as liaison counsel, in my liaison counsel role.
18 We do have a witness whom we hope we can get on and off by 5:30,
19 Victoria Rodriguez, who will be presented by Jorge Sanchez from
20 MALDEF.

21 MR. FIGUEROA: Slight revision. This is Luis Figueroa
22 with the Rodriguez intervenors for MALDEF.

23 JUDGE COLLYER: Now, back up a second. Tell me
24 again -- I know you represent the MALDEF intervenors. What was
25 your name?

1 MR. FIGUEROA: I'm Luis Figueroa, and I represent the
2 Rodriguez intervenors.

3 JUDGE COLLYER: Thank you. Rodriguez intervenors,
4 Luis Figueroa.

5 Please, ma'am, if you would take the stand.

6 (Oath administered by Courtroom Clerk.)

7 **(VICTORIA RODRIGUEZ, INTERVENOR-DEFENDANT witness, having been**
8 **duly sworn, testified as follows:)**

9 **DIRECT EXAMINATION**

10 BY MR. FIGUEROA:

11 Q. Could you please state your name for the record?

12 A. My name is Victoria Rose Rodriguez.

13 Q. And where do you reside?

14 A. 611 West Vestal, in San Antonio, Texas.

15 Q. And how old are you?

16 A. I'm 18.

17 Q. And where do you go to school?

18 A. I go to school at -- I just graduated from Brooks Academy of
19 Science and Engineering on the south side of San Antonio.

20 Q. And where will you be attending in the fall?

21 A. St. Mary's University.

22 Q. And are you currently a registered voter in Texas?

23 A. Yes.

24 Q. And do you plan to vote in the November general election?

25 A. Yes, I do.

1 Q. And are you aware of Senate Bill 14?

2 A. Yes.

3 Q. And how did you and when did you become aware of Senate Bill
4 14?

5 A. My school offered all the seniors on our senior year
6 internships, and my friend Stephanie, she interned with the law
7 firm MALDEF. And we would go back to school and we would all
8 talk about our internships, and she asked me and my twin sister
9 if we had any forms of Texas identification, and I told her no.

10 And then she started talking about this case, and
11 that's when me and my sister decided that we wanted to volunteer
12 for it and get involved in it.

13 Q. Thank you. And do you possess any of the forms of
14 identification required by Senate Bill 14 to vote in person?

15 A. No.

16 Q. So you don't have a Texas driver's license?

17 A. No.

18 Q. Do you have a Texas personal identification card?

19 A. No.

20 Q. And you don't possess a license to carry a concealed
21 handgun, military ID, or U.S. passport?

22 A. No.

23 Q. What documents do you have?

24 A. I have a birth certificate, a voter registration card, and a
25 student ID.

1 Q. And why have you not obtained a Texas driver's license?

2 A. The simple fact that when me and my sister do obtain a
3 driver's license, they automatically put us on the car
4 insurance, and we can't afford that.

5 Q. And are you aware of a document called an election
6 identification certificate?

7 A. I was not at first, but yes, now I am.

8 Q. And is there a reason why you can not obtain an election
9 identification certificate if Senate Bill 14 was enacted?

10 A. Just that my dad works all day, every day of the week, and
11 my mother, she's the sole caretaker of my grandmother, and she's
12 always with her and taking her where she needs to go, her
13 appointments, and it's kind of hard for her to schedule just a
14 day to go to DPS to get one. And also, I don't think I have the
15 proof of residency documents, the correct ones.

16 Q. So let's get to that. Assuming you could get to DPS, you
17 don't believe you have the underlying documents to get the free
18 election identification certificate?

19 A. Correct.

20 Q. I'm going to place before you Defendant-Intervenor's
21 Exhibit 34. It lists the documents which can establish Texas
22 residency. I would like you to review it and tell me when
23 you're done.

24 MS. SPENCER: Your Honor, I would like to object to the
25 introduction of this evidence.

1 JUDGE COLLYER: Well, if you do so at a microphone,
2 where I can hear you.

3 MS. SPENCER: Your Honor, Asha Spencer for the State of
4 Texas from the law firm of Bartlit Beck Herman Palenchar &
5 Scott. I would like to object to the introduction of this
6 evidence. It is incorrect. They are presenting the Texas
7 regulations that do not pertain to the requirements for
8 receiving an election identification certificate; these are
9 instead the regulations for the documents required to receive a
10 state ID card. That is an entirely different matter.

11 MR. FIGUEROA: May I respond?

12 JUDGE COLLYER: Yes, please.

13 MR. FIGUEROA: Your Honor, the regulation states that
14 to establish domicile in Texas for a commercial driver's license
15 or identification certificate, an applicant must reside in Texas
16 for 30 days. These codes were put into place after the
17 enactment of Senate Bill 14, and we believe that the
18 Administrative Code does apply to an election identification
19 certificate.

20 MS. SPENCER: Your Honor, the counsel is reading the
21 regulations in an entirely separate part of the Texas
22 Administrative Code. The Texas Administrative Code,
23 Section 15.182, which is under Subsection L titled "Election
24 Identification Certificate," contains the required documents
25 that you must present to receive an election identification

1 certificate.

2 JUDGE COLLYER: And what is the difference between
3 them?

4 MR. SPENCER: There are a few differences, Your Honor.
5 The most important one for this discussion is that to obtain an
6 election identification certificate, you are not required to
7 provide proof of domicile. The regulations that counsel is
8 presenting for a state ID card do have a requirement for proving
9 domicile, and it is those required documents that counsel is
10 presenting.

11 MR. FIGUEROA: May I respond?

12 JUDGE COLLYER: Yes.

13 MR. FIGUEROA: My response would just be the code
14 itself refers to, one, an identification certificate. It
15 doesn't apply to an identification card. So on the face of the
16 regulation, it seems to apply to an identification certificate,
17 which would -- by definition, election identification
18 certificate seems to apply.

19 Two, since the enactment of this code was enacted after
20 the passage of SB14, it's not clear from the face of the code
21 that she's citing from whether or not other parts of the code
22 are incorporated. It is not clear in the code, and it's a newly
23 enacted code, a newly enacted regulation.

24 So that would be our interpretation.

25 JUDGE COLLYER: Okay. Why don't we do this? I

1 understand the objection, I understand the argument the other
2 way, and I don't have the code in front of me to look at either
3 one of them. So why don't you go ahead with your examination,
4 Mr. Figueroa, and we will figure it out later. This is a bench
5 trial, after all, so we have a little more flexibility than we
6 do if we had a jury.

7 MR. FIGUEROA: We would be happy to brief on the issue.

8 JUDGE COLLYER: We don't need briefs, sir, I promise.
9 At least not on this topic.

10 MS. SPENCER: Thank you, Your Honor.

11 JUDGE COLLYER: It's not that I don't love your
12 writing. Don't misunderstand me. But we'll just go ahead and
13 let you do your examination so we can move on. Okay?

14 MR. FIGUEROA: Okay. Thank you, Your Honor.

15 BY MR. FIGUEROA:

16 Q. So Victoria, could you please take a look at that list of
17 documents?

18 JUDGE COLLYER: Did you put it in front of her?

19 MR. FIGUEROA: Yes.

20 A. Okay.

21 JUDGE WILKINS: Just for the record, this is Exhibit --
22 Defendant-Intervenor Exhibit 34. Correct?

23 MR. FIGUEROA: Yes, Your Honor.

24 JUDGE WILKINS: And this list comes from what specific
25 section of the code?

1 MR. FIGUEROA: Oh, it comes from Title 37 of the Public
2 Safety and Corrections Code, Part One, Chapter 15. It is
3 Section 15.49.

4 JUDGE COLLYER: I thought it was 15.182.

5 MS. SPENCER: Your Honor, 15.182 is the part of the
6 Texas Code that refers to the identification documents required
7 to get an election identification certificate.

8 JUDGE COLLYER: Okay. So we have 15.182, and I'm
9 sorry, your --

10 MR. FIGUEROA: 15.49.

11 JUDGE COLLYER: Thank you, sir.

12 MR. FIGUEROA: Thank you, Your Honor.

13 JUDGE COLLYER: Thank you. Go right ahead.

14 BY MR. Figueroa:

15 Q. Okay. You've had a chance to review that document?

16 A. Yes.

17 Q. Do you have any of the documents listed in the exhibit?

18 A. All I have is a Texas voter registration card and a high
19 school report card and transcript.

20 Q. And does your transcript or report card --

21 JUDGE TATEL: I'm sorry, what? What was your second
22 thing?

23 THE WITNESS: High school report card and transcript.

24 JUDGE TATEL: Oh, report card. Sorry.

25 BY MR. HEBERT:

1 Q. Does your report card or transcript have a home address on
2 it?

3 A. No.

4 Q. So besides those two documents, are there any others on the
5 list that could be used to establish residency which you have?

6 A. No.

7 Q. Do you know which documents your parents have or don't have
8 on that list?

9 A. No, I don't know.

10 Q. Are you aware of the process for absentee - or voting by
11 mail - in Texas?

12 A. I'm unfamiliar with the process.

13 Q. Do you suffer from any disability that would prevent you
14 from voting in person?

15 A. No.

16 Q. And were you -- and where do you plan to be on the general
17 election day of this year?

18 A. At St. Mary's University.

19 Q. So you would be in San Antonio?

20 A. Yes.

21 Q. Now, let me just briefly ask you, you traveled from
22 San Antonio to Washington, D.C. to testify in this trial. Is
23 that correct?

24 A. Yes.

25 Q. How did you manage to board the plane to come to

1 Washington, D.C.?

2 A. I just showed security my high school ID card, and that was
3 sufficient enough to get me through.

4 Q. And what did you show to take the train from Baltimore to
5 D.C.?

6 A. My high school ID card.

7 Q. And what about the hotel you're staying? Did you have to
8 show ID there?

9 A. Yes.

10 Q. And what did you have to show?

11 A. My high school ID card as well.

12 Q. And to enter this courtroom, what did you have to show?

13 A. My high school ID card.

14 Q. So today you could vote with your voter registration card,
15 your student ID, or your birth certificate. Is that your
16 understanding?

17 A. Yes.

18 Q. And under Senate Bill 14, could you vote with those same
19 documents?

20 A. No.

21 Q. And is the information that you've testified today the same
22 for your twin sister, Nicole Rodriguez?

23 A. Yes, it is.

24 MS. SPENCER: Objection, Your Honor. Leading the
25 witness.

1 JUDGE COLLYER: It is leading, but these are yes and no
2 questions and answers. We're rushing so we'll get it through.
3 You'll have an opportunity tomorrow morning. Okay?

4 MR. FIGUEROA: Yes, Your Honor. I was trying to move
5 it along.

6 JUDGE COLLYER: No, no, go right ahead. Finish up, if
7 you can.

8 BY MR. HEBERT:

9 Q. Just to sum up, for you and your sister, the current
10 documents that you have are what?

11 A. A birth certificate, voter registration card, and a high
12 school student ID card.

13 Q. And you do not believe that is enough under Senate Bill 14?

14 A. No.

15 MR. FIGUEROA: Thank you. That's all I have.

16 JUDGE COLLYER: I have one question. I take it your
17 high school student ID card has your photo?

18 THE WITNESS: Yes.

19 JUDGE COLLYER: And does it have your date of birth?

20 THE WITNESS: No.

21 JUDGE COLLYER: Okay. Thank you.

22 We have two minutes remaining.

23 MR. MORTARA: Your Honor, you can charge those to
24 Texas. We'll talk to Victoria tomorrow.

25 JUDGE COLLYER: I can charge them to Texas. Wow,

1 two days in a row we get two minutes from Texas. All right,
2 we'll take them. Thank you, everybody. Have a nice evening,
3 don't work too hard.

4 MR. MORTARA: Thank you, Your Honor.

5 JUDGE COLLYER: Thank you. Thank you, everybody.

6 (Proceedings adjourned at 5:31 p.m.)
7
8

9 **CERTIFICATE OF OFFICIAL COURT REPORTER**

10
11 I, Rebecca Stonestreet, certify that the foregoing is a
12 correct transcript from the record of proceedings in the
13 above-entitled matter.
14
15
16

17 _____
18 **SIGNATURE OF COURT REPORTER**

17 _____
18 **DATE**

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\$13,500 [1] - 21:4 \$2,026,000 [2] - 4:20, 4:23 \$20,500 [1] - 21:5 \$22 [2] - 31:9, 34:2 \$26,000 [1] - 4:25 \$27 [1] - 5:17 \$700,000 [1] - 117:19				80 [2] - 20:18, 33:15 80,000 [1] - 60:3 800,000 [1] - 76:7 859-8953 [1] - 2:25	
,				9	
'11 [1] - 42:22				9 [1] - 86:8 90 [1] - 60:18 902 [1] - 2:13 936-1695 [1] - 1:20 950 [1] - 2:9 955-3200 [1] - 2:14 99 [1] - 61:25	
/					
/4 [1] - 82:22	2			A	
0	2 [2] - 1:11, 4:20 200 [1] - 59:25 2000 [2] - 55:9, 55:12 20001 [1] - 3:12 2002 [4] - 55:22, 63:13, 63:14 2003 [1] - 62:6 2004 [1] - 20:6 2005 [20] - 20:7, 21:13, 22:18, 22:22, 23:20, 23:22, 24:16, 24:17, 53:14, 57:1, 57:3, 57:14, 57:25, 58:5, 58:9, 60:6, 69:13, 74:10, 74:14, 116:11 2006 [4] - 26:24, 69:12, 71:24, 95:20 2007 [15] - 21:13, 22:18, 24:17, 25:1, 58:10, 58:12, 59:2, 59:3, 60:6, 60:13, 68:15, 72:3, 74:10, 74:14 2008 [6] - 26:24, 27:6, 61:20, 69:2, 69:23, 71:24 2009 [21] - 21:13, 22:19, 25:1, 25:7, 25:9, 26:7, 57:3, 59:4, 59:5, 59:12, 59:15, 59:16, 60:6, 60:11, 62:14, 71:10, 74:10, 74:14, 75:24, 78:1, 98:5 201 [1] - 50:4 2010 [11] - 55:10, 61:18, 61:24, 63:14, 63:22, 97:15, 97:18, 100:15, 117:24, 118:6 2011 [40] - 8:19, 9:2, 9:13, 9:23, 14:1,			Abbott [1] - 107:9 Abbott's [1] - 91:11 ability [4] - 15:6, 37:16, 41:22, 88:4 able [12] - 24:24, 37:22, 44:14, 44:22, 45:20, 46:3, 46:18, 62:15, 62:21, 75:4, 75:19, 119:23 above-entitled [1] - 132:13 abridging [1] - 34:16 absent [1] - 21:21 absentee [1] - 129:10 absolutely [3] - 16:15, 16:22, 46:12 absorbed [1] - 5:21 ABUDU [1] - 3:6 Academy [1] - 122:18 access [6] - 5:6, 5:22, 7:14, 29:19, 34:17, 99:24 accessibility [1] - 4:14 accessible [1] - 5:2 account [2] - 28:22, 51:25 accounting [1] - 12:13 accounts [5] - 12:13, 12:16, 12:19, 61:16, 116:16 accurate [6] - 5:10, 14:5, 17:14, 17:15, 17:22, 17:23 achieve [1] - 120:24 Act [4] - 4:24, 30:11, 99:21, 111:5 acted [2] - 62:25, 119:14 acting [2] - 106:11, 121:17 action [3] - 59:24, 79:1, 115:2	
1	1 [1] - 74:8 1.4 [1] - 69:16 10 [5] - 1:6, 52:23, 59:19, 78:20, 81:11 100 [1] - 76:15 10004 [1] - 2:25 101 [1] - 62:2 103 [4] - 20:4, 20:9, 20:16, 21:3 11 [2] - 48:21, 58:12 110 [1] - 3:3 12 [4] - 76:3, 76:8, 86:2, 86:5 12-128 [1] - 1:3 126 [6] - 99:13, 99:16, 100:15, 118:5, 119:1, 119:10 14 [18] - 4:13, 4:22, 5:12, 7:5, 10:14, 11:8, 12:4, 18:22, 22:3, 22:7, 101:21, 123:1, 123:4, 123:14, 124:9, 125:17, 130:18, 131:13 1440 [1] - 3:8 14th [2] - 1:19, 85:17 15 [4] - 30:21, 30:23, 49:20, 128:2 15.182 [4] - 125:23, 128:4, 128:5, 128:8 15.49 [2] - 128:3, 128:10 18 [2] - 17:25, 122:16 1846 [1] - 55:12 1880 [1] - 48:22		3		
		3 [1] - 74:24 30 [2] - 70:2, 125:16 300 [2] - 1:24, 3:4 30303 [1] - 3:9 305-7766 [1] - 2:10 312 [1] - 1:25 34 [2] - 124:21, 127:22 354-3249 [1] - 3:13 37 [3] - 49:17, 106:14, 128:1 39 [1] - 39:25 3:30 [1] - 64:13 3:32 [1] - 64:17			
		4			
		404 [1] - 3:9 405 [1] - 2:17 42.9 [1] - 101:9 4201 [1] - 2:20 44 [1] - 112:16 465 [1] - 84:1 467 [1] - 84:1			
			5		
			5 [3] - 65:8, 67:20, 82:22 50 [1] - 113:3 500 [1] - 2:13 506 [2] - 10:18, 10:20 509 [1] - 11:17 51 [3] - 61:25, 86:2, 86:5 512 [1] - 1:20 513 [1] - 88:19 52 [1] - 86:8 523-2721 [1] - 3:9 53 [2] - 86:12, 97:25 530 [1] - 2:20 534 [1] - 98:20 54 [1] - 1:24 543 [1] - 81:24 547 [2] - 93:16, 94:1 548 [1] - 92:1 558 [1] - 100:13 58 [2] - 29:10, 29:13 580 [2] - 52:14, 52:15 580-6310 [1] - 2:21 582 [1] - 117:21 5:30 [3] - 105:5, 105:7, 121:18 5:31 [1] - 132:6		
			6		
			6 [1] - 6:2 6,000 [3] - 69:2, 69:6, 69:8 60 [1] - 62:25 60654 [1] - 1:25 609 [1] - 2:14 611 [1] - 122:14 628-4673 [1] - 2:18 6511 [1] - 3:12 6th [1] - 44:3		
			7		
			7 [1] - 93:16 70 [4] - 20:13, 69:20, 110:16, 112:24 700 [1] - 17:19 703 [1] - 2:18 7202 [1] - 2:9 73-year-old [1] - 14:18 76/74 [1] - 61:21 77068 [1] - 2:21 78205 [1] - 3:4 78701 [1] - 1:20 79 [1] - 103:5 7th [1] - 1:19		

<p>actions [3] - 54:4, 78:21, 80:4</p> <p>active [4] - 14:20, 16:9, 60:7, 60:13</p> <p>actual [2] - 92:17, 95:14</p> <p>ADAM [2] - 1:21, 2:22</p> <p>add [2] - 39:3, 43:12</p> <p>addition [2] - 70:10, 109:18</p> <p>additional [2] - 73:19, 109:21</p> <p>address [1] - 129:1</p> <p>addressed [3] - 22:17, 28:10, 106:9</p> <p>addresses [1] - 108:8</p> <p>addressing [1] - 108:9</p> <p>adequate [1] - 5:6</p> <p>adhered [1] - 73:20</p> <p>adjourned [1] - 132:6</p> <p>adjusted [1] - 6:1</p> <p>adjustments [1] - 4:25</p> <p>administered [3] - 19:13, 47:6, 122:6</p> <p>Administrative [3] - 125:18, 125:22</p> <p>admitted [1] - 13:2</p> <p>adopted [6] - 41:22, 50:7, 50:24, 51:2, 68:4, 118:5</p> <p>adopting [1] - 56:18</p> <p>adoption [1] - 48:17</p> <p>adverse [1] - 27:24</p> <p>advocating [1] - 8:4</p> <p>affect [2] - 79:17, 112:17</p> <p>affected [2] - 76:8, 79:13</p> <p>affects [2] - 61:11, 79:16</p> <p>affirm [1] - 44:1</p> <p>affirmatively [1] - 27:16</p> <p>afford [2] - 36:13, 124:4</p> <p>afforded [1] - 22:5</p> <p>African [13] - 20:15, 27:1, 27:3, 30:5, 33:14, 45:13, 49:13, 56:17, 58:6, 60:5, 112:19, 113:2, 114:22</p> <p>African-American [7] - 20:15, 27:1, 27:3, 30:5, 58:6, 60:5, 114:22</p> <p>African-Americans [6] - 33:14, 45:13, 49:13, 56:17, 112:19, 113:2</p>	<p>afternoon [9] - 6:24, 6:25, 38:9, 38:10, 47:7, 47:22, 47:23, 80:25, 81:1</p> <p>age [3] - 101:3, 101:5, 101:8</p> <p>agency [2] - 5:16, 5:21</p> <p>ago [2] - 38:11, 46:6</p> <p>agree [25] - 15:9, 17:7, 26:19, 40:23, 43:15, 61:13, 83:11, 87:15, 90:17, 95:22, 96:4, 104:15, 105:25, 106:1, 108:23, 110:6, 110:22, 112:12, 112:14, 112:15, 113:4, 114:12, 116:7, 120:7</p> <p>agreed [4] - 50:18, 56:5, 83:23, 110:1</p> <p>agreement [1] - 112:25</p> <p>ahead [13] - 5:12, 6:19, 18:2, 36:1, 42:11, 47:15, 64:18, 67:25, 85:25, 127:3, 127:12, 128:13, 131:6</p> <p>aided [1] - 3:15</p> <p>aimed [2] - 72:7, 92:17</p> <p>air [1] - 86:24</p> <p>al [1] - 1:9</p> <p>Alabama [1] - 50:4</p> <p>ALAN [1] - 2:7</p> <p>Alexandria [1] - 2:17</p> <p>aliens [7] - 25:10, 68:11, 71:23, 72:1, 72:4, 72:7, 72:11</p> <p>Aliseda [5] - 8:19, 9:9, 41:14, 63:21, 103:25</p> <p>allocated [1] - 5:1</p> <p>allowed [2] - 28:20, 44:16</p> <p>alluded [1] - 8:13</p> <p>allusions [1] - 26:22</p> <p>almost [4] - 24:4, 54:20, 68:15, 70:7</p> <p>aloud [1] - 25:25</p> <p>alternative [1] - 56:16</p> <p>amazing [1] - 35:22</p> <p>amended [1] - 58:2</p> <p>Amendment [4] - 29:10, 29:13, 30:23, 85:17</p> <p>amendment [18] - 29:15, 30:14, 30:17, 30:18, 30:21, 30:25, 31:1, 31:3, 31:11, 31:12, 31:15, 31:16, 31:23, 32:3, 43:5,</p>	<p>45:18, 45:21, 75:19</p> <p>amendment's [1] - 29:3</p> <p>amendments [8] - 28:21, 29:5, 32:12, 58:2, 74:25, 75:5, 75:13</p> <p>America [3] - 4:24, 11:13, 111:5</p> <p>AMERICAN [2] - 3:2, 3:7</p> <p>American [13] - 19:25, 20:15, 27:1, 27:3, 27:22, 29:1, 30:5, 37:7, 58:6, 60:5, 102:5, 114:22, 121:6</p> <p>Americans [8] - 10:22, 33:14, 45:13, 49:13, 56:17, 56:18, 112:19, 113:2</p> <p>amicus [3] - 88:15, 88:19, 88:23</p> <p>amount [1] - 68:20</p> <p>analogous [1] - 110:21</p> <p>analysis [14] - 4:19, 4:23, 49:4, 49:18, 49:21, 55:4, 56:4, 59:14, 60:15, 63:11, 71:20, 74:5, 80:5, 101:25</p> <p>analytical [9] - 81:15, 82:2, 82:3, 82:8, 82:10, 82:11, 82:15, 82:18, 113:14</p> <p>analyze [4] - 52:25, 53:7, 82:3, 82:12</p> <p>analyzed [2] - 48:16, 63:14</p> <p>analyzing [1] - 52:4</p> <p>Anchia [10] - 19:12, 19:21, 29:12, 34:6, 36:4, 37:12, 38:9, 47:4, 57:1, 70:15</p> <p>ANCHIA [1] - 19:16</p> <p>AND [1] - 3:2</p> <p>anecdotal [6] - 12:2, 12:14, 12:18, 13:13, 18:22, 18:24</p> <p>Angeles [1] - 50:14</p> <p>Anglo [3] - 101:8, 102:3, 102:4</p> <p>Anglos [1] - 114:18</p> <p>animus [2] - 120:1, 120:3</p> <p>Ann [1] - 40:8</p> <p>announcement [9] - 93:19, 94:2, 94:13, 94:20, 95:11, 95:25, 96:1, 96:3, 117:17</p>	<p>annual [1] - 75:11</p> <p>Ansolabehe [2] - 110:7, 110:9</p> <p>answer [14] - 28:25, 31:24, 32:19, 32:20, 42:11, 42:23, 43:7, 44:22, 45:2, 65:13, 86:10, 90:25, 106:10, 112:8</p> <p>answered [6] - 15:15, 32:7, 43:13, 111:9, 111:11, 117:6</p> <p>answering [3] - 65:12, 82:14, 85:22</p> <p>answers [1] - 131:2</p> <p>antecedent [2] - 93:12</p> <p>antechamber [1] - 58:21</p> <p>anticipated [4] - 54:13, 65:21, 75:20</p> <p>anticipation [2] - 15:22, 67:8</p> <p>Antonio [14] - 3:4, 4:9, 7:10, 8:23, 8:24, 10:21, 49:23, 70:8, 77:14, 79:12, 122:14, 122:19, 129:19, 129:22</p> <p>apologies [1] - 18:18</p> <p>apologize [4] - 8:5, 42:18, 101:16, 106:23</p> <p>apparent [1] - 67:9</p> <p>appeal [2] - 56:16, 57:5</p> <p>appeals [5] - 50:8, 50:18, 50:19, 52:6, 79:22</p> <p>appear [1] - 30:1</p> <p>APPEARANCES [3] - 1:14, 2:1, 3:2</p> <p>appeared [4] - 8:18, 8:22, 13:10, 13:25</p> <p>appearing [2] - 9:2, 9:3</p> <p>apples [2] - 118:1</p> <p>applicant [1] - 125:15</p> <p>applied [2] - 14:14, 116:1</p> <p>apply [6] - 59:7, 115:23, 125:18, 126:15, 126:16, 126:18</p> <p>appointed [3] - 37:14, 38:21, 39:10</p> <p>appointments [1] - 124:13</p> <p>appreciate [1] - 17:11</p> <p>approach [3] - 28:22, 85:24, 102:11</p>	<p>approaches [1] - 65:12</p> <p>appropriate [1] - 118:17</p> <p>appropriated [1] - 4:23</p> <p>appropriations [2] - 4:17, 5:16</p> <p>approve [1] - 117:13</p> <p>April [8] - 10:9, 11:3, 11:18, 12:21, 15:24, 106:25, 107:4, 107:6</p> <p>area [5] - 7:10, 54:1, 98:10, 101:14, 102:12</p> <p>Area [1] - 33:5</p> <p>areas [1] - 56:18</p> <p>arena [1] - 68:10</p> <p>arenas [1] - 68:21</p> <p>argue [1] - 74:2</p> <p>argued [2] - 32:3, 74:1</p> <p>argument [3] - 71:18, 89:1, 127:1</p> <p>arguments [4] - 68:7, 68:8, 88:23, 89:15</p> <p>Arlington [7] - 36:5, 36:8, 36:12, 54:16, 54:19, 54:21, 54:22</p> <p>arose [2] - 25:7, 110:15</p> <p>article [9] - 69:6, 93:22, 95:8, 96:13, 107:14, 108:8, 108:17, 110:7</p> <p>articles [3] - 51:8, 105:11</p> <p>articulated [3] - 28:3, 28:7, 31:22</p> <p>ASHA [1] - 1:22</p> <p>Asha [1] - 125:3</p> <p>Asian [2] - 56:18, 102:5</p> <p>Asian-American [1] - 102:5</p> <p>Asian-Americans [1] - 56:18</p> <p>Asians [1] - 45:14</p> <p>assess [1] - 46:10</p> <p>assigned [1] - 37:13</p> <p>Association [2] - 19:23, 121:6</p> <p>assume [1] - 103:13</p> <p>Assuming [1] - 124:16</p> <p>assumption [1] - 53:18</p> <p>assumptions [1] - 53:7</p> <p>astonished [1] - 114:13</p> <p>Atlanta [1] - 3:9</p>
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atmosphere [1] - 57:21 attempt [1] - 85:4 attempts [1] - 66:18 attend [2] - 21:19, 21:24 attended [1] - 22:13 attending [1] - 122:20 attention [1] - 46:17 attorney [4] - 13:1, 40:4, 47:8, 70:8 Attorney [25] - 1:6, 19:10, 19:11, 40:13, 69:12, 69:23, 91:11, 91:15, 91:19, 92:19, 92:24, 93:8, 93:18, 93:20, 94:2, 94:6, 94:21, 95:11, 95:14, 95:19, 95:23, 96:1, 96:5, 117:16 ATTORNEY [1] - 1:18 attorneys [1] - 69:18 attributed [2] - 10:17, 11:23 August [2] - 16:18, 17:25 Austin [7] - 1:20, 8:25, 9:1, 9:4, 9:23, 38:12, 79:11 Australia [1] - 80:16 Australian [1] - 80:15 author [3] - 26:10, 32:12, 45:10 authored [4] - 82:23, 83:17, 84:16, 86:15 authority [1] - 79:4 automatically [1] - 124:3 automobiles [1] - 33:4 autonomous [1] - 115:3 availability [4] - 28:1, 30:3, 45:16, 45:17 available [11] - 5:3, 31:6, 34:19, 34:22, 36:15, 37:25, 51:13, 51:14, 66:16, 74:19, 100:9 Avenue [1] - 2:9 average [1] - 21:5 avoiding [1] - 25:6 award [2] - 121:5, 121:6 awards [2] - 121:3, 121:4 aware [14] - 4:13, 14:16, 32:16, 32:24, 55:3, 59:15, 71:4, 87:1, 103:4, 103:7, 123:1, 123:3, 124:5,	129:10 B background [5] - 53:20, 54:3, 54:6, 55:5, 55:6 badly [1] - 71:6 balance [1] - 34:17 ballot [5] - 24:23, 27:14, 27:19, 34:18, 48:23 ballots [1] - 24:6 Baltimore [1] - 130:4 barred [1] - 10:23 BARTLIT [1] - 1:23 Bartlit [1] - 125:4 based [3] - 4:12, 78:20, 111:3 basic [1] - 87:7 basis [6] - 43:23, 44:1, 64:2, 64:5, 64:11 battle [1] - 57:7 battleground [1] - 27:6 bear [1] - 6:11 bears [1] - 89:7 beating [1] - 50:7 became [8] - 25:4, 26:15, 37:23, 55:10, 58:10, 58:12, 98:17 BECK [1] - 1:23 Beck [1] - 125:4 become [2] - 10:22, 123:3 becomes [1] - 85:6 bed [2] - 58:21 BEFORE [1] - 1:12 began [2] - 20:6, 23:1 beginning [1] - 58:14 behalf [1] - 80:19 behavior [1] - 53:6 behind [5] - 88:5, 107:25, 108:10, 108:12, 108:15 belief [2] - 28:14, 28:15 beliefs [1] - 53:7 believes [1] - 28:14 BELL [1] - 2:3 BELL-PLATTS [1] - 2:3 BENCH [1] - 1:11 bench [1] - 127:4 benefit [2] - 115:15, 115:22 Berkower [1] - 19:9 BERKOWER [16] - 2:5, 19:7, 19:9, 19:14, 19:19, 28:18,	29:8, 29:11, 30:19, 30:22, 32:4, 35:2, 41:24, 44:11, 44:13, 46:23 better [3] - 20:25, 34:10, 52:22 between [11] - 15:24, 22:22, 26:23, 26:24, 55:9, 57:7, 60:23, 67:19, 74:17, 80:17, 126:2 beyond [2] - 25:2, 84:8 big [2] - 74:16, 79:10 biggest [1] - 116:18 Bill [24] - 4:13, 4:22, 5:12, 7:5, 10:14, 11:8, 12:4, 18:22, 22:3, 22:7, 58:25, 59:1, 69:13, 70:1, 91:22, 98:5, 101:21, 123:1, 123:3, 123:14, 124:9, 125:17, 130:18, 131:13 bill [79] - 4:13, 4:17, 4:19, 4:23, 5:5, 7:20, 21:17, 22:11, 22:14, 23:18, 23:20, 23:23, 25:2, 26:10, 26:16, 26:21, 27:14, 27:21, 28:19, 28:23, 29:2, 29:21, 29:22, 30:9, 31:6, 32:7, 32:9, 32:11, 32:12, 32:16, 32:19, 32:22, 34:25, 41:2, 41:5, 41:15, 45:10, 45:11, 45:12, 45:19, 57:2, 57:4, 57:10, 57:12, 57:18, 57:20, 57:24, 58:1, 58:3, 58:22, 58:24, 59:4, 59:6, 60:24, 61:2, 61:3, 61:10, 62:24, 62:25, 63:1, 63:6, 68:12, 71:11, 72:2, 72:12, 75:14, 75:24, 77:16, 78:7, 79:9, 108:24, 112:1, 112:17, 117:14, 119:20 Bill's [1] - 32:6 bill's [1] - 32:15 billion [1] - 5:17 bills [25] - 21:19, 22:23, 22:24, 39:6, 54:5, 59:7, 59:8, 59:21, 59:25, 60:6, 61:17, 62:14, 62:20, 62:23, 74:9, 74:10,	74:11, 74:14, 74:16, 74:17, 74:20, 75:1, 77:10, 77:12 birth [10] - 15:4, 17:2, 17:8, 31:8, 35:7, 35:10, 123:24, 130:15, 131:11, 131:19 bit [10] - 8:17, 23:6, 23:12, 39:1, 54:21, 61:13, 75:17, 80:13, 103:24, 104:24 black [4] - 20:16, 56:9, 83:12, 85:20 Black [7] - 27:23, 73:21, 73:22, 79:12, 102:5, 110:17, 110:20 blacks [3] - 73:7, 110:17, 116:22 block [4] - 57:10, 57:19, 57:23, 59:11 blow [3] - 10:18, 81:20, 100:6 board [1] - 129:25 Board [1] - 50:14 body [3] - 37:21, 58:19, 119:16 Bonnen [1] - 39:16 book [27] - 48:19, 52:24, 81:4, 81:7, 81:11, 81:19, 81:21, 81:22, 82:1, 82:8, 82:11, 82:14, 82:17, 82:19, 83:2, 83:16, 84:9, 84:13, 84:15, 84:19, 84:21, 84:22, 86:13, 86:14, 87:5, 121:2 border [1] - 98:11 bottom [1] - 29:9 bought [1] - 14:10 box [1] - 48:25 branch [2] - 37:7, 45:25 Branch [1] - 20:11 BRAZIL [1] - 2:19 Brazil [1] - 35:24 break [3] - 62:5, 64:13, 64:15 Brennan [8] - 10:10, 11:3, 11:19, 12:21, 13:12, 13:14, 15:12, 78:2 bribery [1] - 24:9 brief [15] - 22:10, 22:12, 53:5, 88:15, 88:17, 88:19, 88:23, 89:3, 89:5, 89:6, 89:10, 89:11, 89:14,	89:18, 127:7 briefly [8] - 44:11, 52:11, 53:2, 53:4, 56:13, 56:24, 117:10, 129:21 briefs [1] - 127:8 bring [3] - 25:20, 57:18, 117:21 Broadway [1] - 3:3 broke [1] - 54:23 broken [1] - 54:21 Brooks [1] - 122:18 brought [7] - 4:16, 29:3, 42:2, 42:4, 59:4, 70:4, 90:11 BRUCE [1] - 2:5 brutal [1] - 57:7 BRYAN [1] - 2:6 budget [7] - 5:11, 5:16, 5:17, 7:19, 28:1, 59:8, 61:2 build [4] - 94:3, 95:12, 95:23, 96:3 building [1] - 116:4 built [1] - 57:20 bunch [2] - 25:20, 56:3 Bunche [1] - 121:5 burden [4] - 34:2, 88:7, 88:12, 89:1 Bureau [1] - 35:11 bus [2] - 33:5, 33:19 but.. [1] - 107:1 BY [43] - 4:7, 6:23, 16:1, 17:17, 18:20, 19:19, 28:18, 29:11, 30:22, 32:4, 36:3, 36:22, 37:11, 38:8, 42:13, 44:13, 47:21, 48:7, 52:16, 68:2, 74:4, 77:1, 80:24, 81:25, 86:1, 100:18, 100:24, 105:9, 106:16, 107:13, 107:20, 109:16, 111:17, 117:5, 117:12, 119:6, 119:13, 120:20, 122:10, 127:15, 128:14, 128:25, 131:8 C CA [1] - 1:3 cabal [3] - 107:25, 108:12, 108:14 calendar [4] - 41:23, 42:15, 42:22, 59:21 California [1] - 48:1

<p>CalTech [2] - 48:8, 48:9</p> <p>campaign [5] - 92:20, 92:25, 93:9, 117:16, 117:18</p> <p>candidate [15] - 27:3, 50:17, 63:23, 102:1, 102:13, 102:15, 102:24, 103:12, 103:14, 103:16, 103:22, 104:5, 104:6, 104:15</p> <p>candidates [2] - 104:11, 104:13</p> <p>canvassed [1] - 91:20</p> <p>Capacity [1] - 1:6</p> <p>capita [2] - 21:3, 21:5</p> <p>car [4] - 14:10, 36:13, 36:14, 124:3</p> <p>card [19] - 123:18, 123:24, 125:10, 126:8, 126:15, 128:18, 128:19, 128:20, 128:23, 128:24, 129:1, 130:2, 130:6, 130:11, 130:13, 130:14, 131:11, 131:12, 131:17</p> <p>care [1] - 33:19</p> <p>carefully [1] - 68:23</p> <p>caretaker [1] - 124:11</p> <p>Carnegie [1] - 2:13</p> <p>carried [3] - 43:5, 45:18</p> <p>Carrollton [1] - 20:11</p> <p>carry [2] - 58:8, 123:20</p> <p>cars [1] - 33:2</p> <p>Carter [1] - 41:15</p> <p>case [67] - 12:23, 15:13, 19:10, 48:11, 48:13, 50:1, 50:2, 50:21, 51:14, 51:18, 53:10, 53:18, 54:11, 54:15, 63:17, 67:4, 67:21, 70:3, 73:18, 78:19, 79:7, 79:19, 79:21, 81:3, 81:16, 82:2, 82:9, 82:15, 82:20, 82:22, 83:7, 84:11, 84:12, 86:9, 86:10, 86:14, 87:5, 88:15, 88:20, 89:25, 90:6, 90:22, 90:24, 91:3, 91:14, 98:14, 102:8, 102:20, 103:23, 104:3, 104:5, 104:12, 105:3, 105:6,</p>	<p>105:19, 105:22, 108:9, 109:1, 110:6, 110:12, 113:19, 114:21, 116:1, 116:21, 120:8, 123:10</p> <p>cases [11] - 24:8, 24:12, 24:13, 49:16, 49:17, 49:18, 49:22, 50:10, 51:17, 63:19, 85:13</p> <p>cast [2] - 25:5, 25:6</p> <p>catch [3] - 18:25, 112:20, 112:22</p> <p>Caucus [6] - 19:25, 27:22, 27:23, 29:1, 37:7, 110:20</p> <p>cautionary [1] - 53:6</p> <p>census [2] - 21:3, 55:13</p> <p>Center [9] - 2:13, 10:10, 11:3, 11:19, 12:21, 13:12, 13:14, 15:12, 78:2</p> <p>central [1] - 92:16</p> <p>centuries [1] - 73:15</p> <p>century [1] - 73:22</p> <p>certain [5] - 53:7, 53:11, 56:18, 88:13, 89:1</p> <p>certainly [7] - 4:16, 9:10, 28:25, 48:4, 64:16, 104:11, 104:14</p> <p>certificate [18] - 15:4, 35:7, 35:10, 123:24, 124:6, 124:9, 124:18, 125:8, 125:15, 125:19, 126:1, 126:6, 126:14, 126:16, 126:18, 128:7, 130:15, 131:11</p> <p>CERTIFICATE [1] - 132:9</p> <p>Certificate [1] - 125:24</p> <p>certificates [1] - 31:8</p> <p>certify [1] - 132:11</p> <p>cetera [1] - 85:21</p> <p>Chad [1] - 35:23</p> <p>CHAD [1] - 2:19</p> <p>chair [5] - 19:23, 22:4, 39:15, 98:17, 98:25</p> <p>chairman [2] - 39:18, 98:4</p> <p>chairmanship [2] - 98:1, 98:8</p> <p>chairs [3] - 39:21, 39:22, 98:20</p> <p>challenge [1] - 49:24</p>	<p>challenged [1] - 54:25</p> <p>chance [1] - 128:15</p> <p>change [13] - 41:16, 45:19, 54:2, 55:14, 59:5, 62:9, 62:10, 62:11, 62:12, 62:16, 74:16, 96:21, 96:24</p> <p>changed [9] - 22:25, 23:10, 24:15, 31:12, 32:22, 55:13, 72:9, 96:24, 119:3</p> <p>changes [6] - 30:14, 49:4, 59:13, 62:9, 97:1, 97:14</p> <p>changing [3] - 41:18, 49:2, 62:18</p> <p>Chapter [1] - 128:2</p> <p>chapter [3] - 52:24, 84:2, 84:3</p> <p>characteristics [1] - 20:24</p> <p>characterize [4] - 8:3, 63:7, 88:16, 91:13</p> <p>charge [5] - 31:5, 39:7, 69:24, 131:23, 131:25</p> <p>charges [2] - 22:19, 31:7</p> <p>check [4] - 13:1, 14:4, 15:10, 16:4</p> <p>checked [3] - 15:12, 58:20, 101:10</p> <p>checking [1] - 58:16</p> <p>Chicago [1] - 1:25</p> <p>chief [3] - 30:2, 30:12, 46:1</p> <p>Chief [4] - 82:24, 83:17, 84:16, 86:15</p> <p>child [1] - 33:19</p> <p>children [3] - 33:19, 34:11, 60:3</p> <p>CHIP [1] - 60:3</p> <p>choice [17] - 37:22, 50:17, 56:23, 62:8, 63:23, 63:25, 102:2, 102:13, 102:24, 103:12, 103:14, 103:16, 103:22, 104:7, 104:11, 104:13, 104:16</p> <p>choices [1] - 56:22</p> <p>Chris [1] - 40:4</p> <p>chronology [1] - 15:24</p> <p>chub [10] - 41:22, 59:16, 59:23, 60:10, 62:13, 62:14, 62:15, 62:19, 62:21</p> <p>chubbing [6] - 41:19, 42:15, 42:21, 96:21,</p>	<p>96:25, 97:7</p> <p>CIRCUIT [1] - 1:12</p> <p>circumstances [1] - 104:13</p> <p>cite [8] - 76:13, 105:11, 105:14, 105:17, 106:12, 107:2, 108:5, 114:17</p> <p>cited [11] - 86:14, 89:12, 89:22, 90:6, 93:24, 105:23, 106:2, 106:19, 107:1, 108:3, 111:21</p> <p>cities [1] - 20:10</p> <p>citing [3] - 89:19, 114:17, 126:21</p> <p>City [2] - 36:5, 36:8</p> <p>civic [3] - 34:12, 34:15, 34:16</p> <p>Civil [1] - 2:8</p> <p>CIVIL [1] - 3:7</p> <p>claim [4] - 68:25, 70:6, 89:25, 90:12</p> <p>claimed [1] - 120:24</p> <p>claims [6] - 24:6, 68:22, 68:24, 70:9, 121:1</p> <p>class [2] - 79:10, 79:11</p> <p>classes [3] - 30:11, 32:17, 45:13</p> <p>clauses [1] - 48:24</p> <p>clear [13] - 7:4, 14:6, 15:21, 16:23, 17:24, 22:1, 23:17, 25:14, 32:19, 79:9, 83:6, 126:20, 126:22</p> <p>Clerk [3] - 19:13, 47:6, 122:6</p> <p>clients [2] - 35:18, 35:19</p> <p>climate [1] - 54:2</p> <p>clock [1] - 95:6</p> <p>close [3] - 6:2, 6:7, 105:2</p> <p>co [2] - 35:23, 121:4</p> <p>co-counsel [1] - 35:23</p> <p>co-winner [1] - 121:4</p> <p>coalition [1] - 61:6</p> <p>Code [5] - 125:18, 125:22, 128:2, 128:6</p> <p>code [8] - 126:13, 126:19, 126:20, 126:21, 126:22, 126:23, 127:2, 127:25</p> <p>codes [1] - 125:16</p> <p>coincidence [1] - 27:2</p> <p>collaborative [1] - 28:22</p>	<p>colleagues [1] - 5:25</p> <p>college [1] - 61:8</p> <p>collusion [1] - 24:7</p> <p>COLLYER [91] - 1:13, 4:2, 6:10, 6:13, 6:18, 6:21, 17:4, 17:6, 17:13, 18:9, 18:12, 18:15, 18:17, 19:2, 19:5, 19:8, 19:15, 28:13, 35:17, 35:22, 35:25, 36:19, 37:1, 37:4, 37:9, 38:4, 42:6, 46:24, 47:3, 47:10, 47:13, 47:15, 48:2, 48:6, 52:15, 64:7, 64:10, 64:18, 72:18, 76:16, 76:19, 76:21, 80:8, 80:11, 80:16, 85:25, 100:20, 105:1, 105:7, 107:15, 107:19, 109:5, 109:12, 109:15, 111:1, 111:8, 111:14, 111:16, 117:9, 118:2, 118:7, 118:11, 118:18, 118:23, 119:4, 119:11, 120:12, 120:15, 121:9, 121:13, 121:23, 122:3, 125:1, 125:12, 126:2, 126:12, 126:25, 127:8, 127:11, 127:18, 128:4, 128:8, 128:11, 128:13, 131:1, 131:6, 131:16, 131:19, 131:21, 131:25, 132:5</p> <p>color [2] - 80:2, 103:20</p> <p>colorblind [2] - 85:3, 86:17</p> <p>Colorblind [6] - 52:24, 81:7, 81:12, 84:23, 120:5, 121:2</p> <p>COLUMBIA [1] - 1:2</p> <p>column [8] - 93:17, 93:23, 94:17, 94:20, 95:20, 96:8, 96:11, 96:16</p> <p>coming [2] - 58:17, 67:22</p> <p>comity [1] - 57:20</p> <p>commented [1] - 55:14</p> <p>commercial [2] - 71:25, 125:14</p>
-------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------	---------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------	-----------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------	--------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------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Committee [11] - 21:10, 21:23, 22:1, 22:2, 22:18, 38:19, 39:13, 69:25, 75:23, 78:1, 98:5 committee [31] - 21:12, 22:8, 23:7, 24:22, 25:18, 25:22, 27:23, 37:13, 37:14, 37:17, 37:20, 37:23, 38:3, 38:16, 38:17, 38:21, 39:3, 39:6, 39:9, 39:16, 39:20, 39:23, 40:2, 40:7, 40:16, 44:17, 46:17, 46:18, 46:22, 72:6, 99:1 committees [4] - 22:3, 22:16, 37:22, 98:20 commonly [1] - 54:15 communities [2] - 27:25, 102:7 community [6] - 20:21, 20:24, 64:1, 64:2, 119:11, 119:12 commuter [1] - 33:6 compared [2] - 27:1, 53:22 comparison [3] - 26:22, 110:15, 118:1 compelling [1] - 13:20 completed [1] - 29:18 completely [1] - 71:17 comport [1] - 4:24 composition [6] - 38:2, 53:23, 100:5, 101:11, 117:20, 119:8 comprise [1] - 33:15 compromise [2] - 61:22, 61:23 computer [2] - 3:15, 6:12 computer-aided [1] - 3:15 concealed [4] - 11:7, 15:1, 33:13, 123:20 concentrates [1] - 92:10 concern [4] - 7:6, 55:17, 73:9, 73:10 concerned [3] - 31:7, 50:3, 85:14 concerning [5] - 10:10, 17:21, 23:24, 40:5, 100:14 concerns [12] - 4:13, 5:5, 7:14, 10:13, 13:24, 24:7, 27:20, 28:9, 28:10, 28:19, 28:22, 97:14 conclude [3] - 69:7, 83:2, 113:16 concluded [4] - 49:12, 50:7, 80:4, 83:16 concludes [1] - 108:11 concluding [3] - 81:18, 83:2, 87:4 conclusion [6] - 50:9, 51:2, 66:8, 69:16, 84:4, 106:4 conclusions [5] - 24:1, 24:3, 50:19, 50:22, 51:1 condition [1] - 14:16 conduct [1] - 45:24 conducted [10] - 29:23, 30:2, 66:24, 69:25, 92:20, 92:24, 93:8, 111:20, 113:10 conducting [1] - 29:25 confederate [1] - 48:22 conference [1] - 12:21 conferences [2] - 7:22, 69:17 confidence [19] - 26:16, 26:21, 27:11, 68:13, 70:12, 70:17, 70:19, 70:20, 70:24, 71:1, 71:3, 71:7, 71:14, 71:16, 71:18, 87:25, 89:20, 90:5, 109:20 confluence [3] - 23:15, 24:17, 60:23 confuse [1] - 105:4 Congressional [1] - 110:20 connected [1] - 73:11 connotation [2] - 8:6, 24:19 conscious [1] - 53:9 consent [1] - 59:21 consequences [4] - 8:14, 75:11, 77:16, 78:9 conservative [1] - 98:9 consider [6] - 22:25, 50:12, 51:12, 54:22, 73:5, 105:19 considerable [6] - 55:17, 60:9, 65:18, 68:20, 68:23, 77:6 considerably [2] - 68:14, 73:6 consideration [10] - 26:20, 27:13, 27:20, 51:24, 57:2, 57:19, 57:23, 69:13, 75:23, 85:17 considerations [1] - 68:15 considered [10] - 21:15, 22:22, 29:5, 48:20, 48:23, 55:7, 64:1, 68:17, 71:20, 77:3 considering [1] - 105:19 considers [1] - 80:12 constituent [1] - 109:23 constituents [13] - 20:12, 20:14, 20:20, 33:1, 33:7, 33:10, 33:14, 34:3, 36:12, 43:16, 43:21, 46:8, 46:11 Constitution [1] - 50:4 constitutional [3] - 46:12, 49:5, 107:23 constrain [1] - 74:22 constrained [1] - 74:13 constraining [1] - 74:22 consuming [1] - 33:22 contains [2] - 17:7, 125:24 contemporaneous [1] - 23:21 contentious [1] - 116:8 contents [3] - 88:22, 92:5, 112:9 contests [1] - 63:12 context [11] - 21:4, 32:10, 53:19, 54:23, 55:6, 55:8, 61:21, 94:24, 111:9, 111:10, 111:13 continually [1] - 71:22 continuation [1] - 114:11 continue [2] - 56:21, 67:21 CONTINUED [3] - 2:1, 3:2, 4:6 continued [1] - 57:22 continuing [1] - 75:3 contrary [1] - 104:8 control [4] - 55:18, 55:24, 67:12, 70:22 convenience [1] - 81:23 convenings [1] - 7:22 conventions [1] - 49:6 conversation [2] - 15:23, 105:8 convicted [2] - 70:3, 70:5 convince [2] - 88:11, 101:24 convinces [1] - 78:6 correct [8] - 4:10, 8:9, 11:11, 11:14, 13:9, 13:14, 15:14, 17:8, 36:6, 38:12, 38:13, 38:16, 38:20, 38:22, 38:23, 38:25, 39:11, 39:13, 39:14, 39:17, 39:18, 39:24, 40:5, 40:9, 40:11, 40:17, 40:18, 40:21, 41:2, 41:11, 42:15, 42:20, 43:1, 43:4, 43:5, 43:11, 43:16, 44:6, 48:12, 61:14, 65:6, 71:5, 72:15, 72:16, 72:23, 76:11, 79:20, 81:7, 81:8, 81:12, 81:13, 81:16, 82:21, 84:20, 86:19, 87:3, 87:14, 88:9, 88:21, 89:16, 91:23, 91:24, 95:21, 97:16, 99:17, 105:13, 113:11, 115:13, 116:20, 118:8, 118:13, 119:17, 124:15, 124:19, 127:22, 129:23, 132:12 corrected [1] - 14:21 correcting [1] - 13:7 Corrections [1] - 128:2 correctly [1] - 29:16 correlation [1] - 60:23 corridor [1] - 20:9 cost [4] - 31:9, 31:20, 33:16, 45:1 couch [1] - 78:22 Council [1] - 121:5 counsel [10] - 35:18, 35:23, 67:22, 76:12, 87:21, 121:17, 125:20, 126:7, 126:9 count [1] - 103:25 counted [2] - 105:23, 106:1 counties [1] - 69:19 country [3] - 20:23, 34:8, 34:10 county [2] - 29:19, 35:10 County [11] - 20:9, 36:12, 36:13, 36:23, 45:15, 50:14, 69:3, 79:11, 98:11, 119:3 couple [5] - 15:9, 41:18, 58:7, 71:24, 113:21 course [3] - 15:23, 47:12, 90:8 court [20] - 9:22, 39:5, 41:13, 50:8, 50:12, 50:18, 50:19, 55:2, 55:6, 59:15, 73:4, 79:1, 79:22, 81:9, 88:11, 97:14, 102:23, 104:20, 105:18, 107:11 COURT [6] - 1:1, 6:6, 15:17, 44:9, 132:9, 132:18 Court [19] - 3:11, 3:11, 47:24, 50:2, 50:9, 50:18, 51:19, 52:6, 53:3, 82:23, 83:7, 83:14, 83:19, 83:20, 89:17, 90:3, 90:20, 91:5, 107:24 courtesy [1] - 22:5 Courthouse [1] - 3:12 Courtroom [3] - 19:13, 47:6, 122:6 courtroom [2] - 49:23, 130:12 courts [2] - 52:2, 52:6 Courts [1] - 52:6 covenant [1] - 79:25 cover [1] - 69:20 Crawford [8] - 40:5, 88:15, 88:20, 89:2, 89:25, 90:8, 90:19, 117:13 create [1] - 34:1 created [2] - 81:10, 115:7 credible [1] - 89:9 crimes [2] - 50:5, 50:6 criterion [1] - 120:3 critic [2] - 8:2, 8:3 critical [2] - 8:5, 8:10 criticism [1] - 7:5 criticizing [1] - 113:8 cross [3] - 15:17, 36:19, 38:5 CROSS [3] - 6:22, 38:7, 80:23 cross-examination [3] - 15:17, 36:19, 38:5 CROSS- EXAMINATION [3] - 6:22, 38:7, 80:23 Crow [1] - 46:13				
--------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------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<p>CRR [1] - 3:11 cue [1] - 112:17 cues [1] - 112:18 cultural [1] - 20:22 cumbersome [1] - 33:22 current [6] - 41:1, 74:8, 74:17, 90:15, 90:16, 131:9 cut [1] - 82:13 cuts [1] - 28:2 CVAP [1] - 101:2</p>	<p>Dechert [1] - 121:16 DECHERT [1] - 2:12 decide [1] - 53:18 decided [5] - 6:9, 51:20, 90:8, 90:18, 123:11 decision [11] - 32:22, 33:23, 40:5, 50:19, 51:18, 54:3, 54:4, 64:2, 79:22, 82:23, 90:19 decisions [1] - 46:4 declaration [2] - 97:14, 102:23 declared [2] - 62:24, 63:1 decline [1] - 70:19 deconstructing [1] - 85:5 decrease [1] - 87:20 decreasing [2] - 89:19, 90:4 dedicated [1] - 24:22 deep [1] - 78:23 deeper [1] - 23:6 defeated [1] - 45:21 Defendant [4] - 1:8, 2:3, 124:20, 127:22 DEFENDANT [4] - 4:4, 19:16, 47:18, 122:7 defendant [1] - 80:9 Defendant-Intervenor [1] - 127:22 Defendant-Intervenor's [1] - 124:20 defendants [2] - 19:5, 46:25 Defendants [2] - 1:10, 2:12 Defense [2] - 52:13, 92:1 DEFENSE [1] - 3:2 definitely [1] - 4:15 definition [1] - 126:17 definitively [1] - 119:2 deflected [1] - 7:18 deflections [1] - 5:15 degree [1] - 63:7 Delay [1] - 62:6 delay [1] - 45:19 delayed [3] - 29:16, 29:22, 62:23 DELLHEIM [28] - 2:7, 47:5, 47:7, 47:12, 47:14, 47:17, 47:21, 48:7, 52:13, 52:16, 64:9, 64:21, 68:1, 68:2, 74:4, 76:20,</p>	<p>76:24, 77:1, 80:6, 110:25, 111:3, 117:10, 117:12, 117:21, 118:8, 119:6, 119:13, 120:10 Dellheim [4] - 47:8, 64:18, 81:4, 91:10 demand [1] - 109:24 Democrat [3] - 103:6, 103:13 Democratic [13] - 49:11, 56:8, 57:9, 60:7, 60:22, 61:6, 62:1, 66:5, 67:14, 75:6, 75:13, 110:20, 119:23 democratic [1] - 63:8 Democrats [32] - 57:22, 58:11, 59:11, 59:16, 60:2, 61:10, 62:4, 62:8, 62:13, 62:18, 62:21, 63:4, 65:3, 66:10, 66:18, 70:25, 73:2, 75:25, 77:7, 78:5, 79:10, 79:12, 79:16, 97:6, 104:1, 104:12, 112:21, 115:24, 116:9, 116:13, 116:22 democrats [1] - 59:7 demographic [9] - 53:22, 54:1, 54:22, 55:9, 99:24, 100:8, 100:14, 102:14, 110:15 demographics [1] - 20:20 demography [1] - 54:1 demonstrative [1] - 81:10 denied [2] - 72:10, 90:13 Dennis [1] - 39:16 department [1] - 5:25 DEPARTMENT [1] - 2:7 Department [12] - 6:1, 15:7, 25:19, 27:17, 35:13, 47:9, 52:22, 81:10, 87:21, 95:4, 96:20, 110:11 Department's [1] - 117:7 dependable [1] - 98:9 dependent [2] - 56:7, 56:9 deposition [20] - 12:22, 12:25, 13:3,</p>	<p>13:16, 15:22, 15:25, 16:2, 38:12, 85:13, 85:23, 86:22, 86:24, 90:10, 93:15, 96:17, 99:14, 99:18, 110:2, 113:9, 114:14 depositions [2] - 51:10, 51:13 derived [1] - 82:10 describe [2] - 52:11, 60:12 described [2] - 57:21, 82:11 describing [2] - 23:17, 92:13 description [1] - 92:8 design [1] - 119:5 designed [2] - 23:8, 39:6 detail [2] - 41:21, 68:23 detecting [3] - 90:21, 91:5, 109:20 determine [9] - 24:24, 51:6, 51:21, 53:3, 54:14, 65:10, 65:22, 75:1, 88:5 Determine [1] - 51:23 determining [2] - 49:3, 51:25 development [1] - 49:10 deviation [1] - 54:10 device [2] - 62:4, 63:5 devoid [1] - 114:3 devote [1] - 69:16 Dewhurst [2] - 63:2, 71:22 dialogue [1] - 26:9 died [1] - 98:5 difference [7] - 61:14, 67:19, 74:11, 91:3, 91:4, 118:19, 126:2 differences [4] - 20:22, 20:23, 126:4 different [14] - 23:3, 28:23, 33:20, 43:2, 61:16, 66:15, 81:11, 90:24, 98:20, 112:23, 114:23, 114:25, 119:2, 125:10 differently [1] - 90:11 difficult [3] - 61:4, 61:5, 73:20 difficulties [1] - 27:25 difficulty [2] - 7:9, 61:7 diminish [1] - 80:2 DIRECT [6] - 4:6,</p>	<p>19:18, 36:2, 37:10, 47:20, 122:9 direct [4] - 41:25, 81:3, 93:2, 96:20 directly [3] - 42:5, 56:18, 92:11 disability [1] - 129:13 disabled [1] - 14:15 disadvantage [2] - 49:14, 73:13 disagree [3] - 99:15, 108:14, 108:22 disagreed [1] - 89:17 discern [1] - 25:22 disciplined [2] - 115:14, 115:21 disclose [5] - 82:8, 82:18, 102:23, 104:20, 106:8 disclosed [4] - 76:11, 82:15, 95:17, 97:9 discloses [4] - 82:2, 87:5, 92:14, 111:19 discover [1] - 76:17 discriminate [1] - 49:9 discriminating [1] - 119:21 discrimination [6] - 85:18, 85:19, 85:20, 89:24, 90:12, 104:3 discriminatory [23] - 48:15, 49:8, 50:8, 50:24, 51:2, 67:2, 75:9, 78:10, 79:23, 80:3, 87:8, 87:13, 88:6, 101:25, 102:9, 102:20, 106:6, 106:11, 113:17, 117:14, 119:15, 119:17, 120:4 discuss [5] - 5:15, 68:25, 84:5, 86:22, 101:18 discussed [11] - 59:22, 72:2, 85:13, 90:7, 90:10, 94:24, 96:17, 99:19, 101:19, 112:18, 114:25 discussing [4] - 70:15, 84:2, 84:3, 86:12 discussion [16] - 5:14, 7:18, 23:10, 23:15, 65:18, 66:17, 70:14, 71:17, 76:14, 101:21, 104:20, 104:24, 110:4, 120:5, 120:25, 126:5 discussions [2] -</p>
D				
<p>D-548 [2] - 97:22, 101:17 D-E-L-L-H-E-I-M [1] - 47:12 D.C [5] - 1:5, 3:12, 129:22, 130:1, 130:5 dad [1] - 124:10 Dallas [17] - 20:9, 20:10, 21:6, 33:5, 36:13, 69:3, 69:4, 96:12, 105:24, 106:8, 106:17, 107:16, 108:3, 109:1, 109:8, 109:9 DANIEL [1] - 2:4 data [8] - 24:10, 30:13, 45:11, 46:3, 99:24, 102:14, 103:8 DATE [1] - 132:18 date [8] - 15:21, 17:2, 17:8, 17:21, 17:24, 30:1, 106:21, 131:19 David [1] - 40:13 DAVID [1] - 1:12 Davio [2] - 40:11, 44:20 DAY [1] - 1:11 days [5] - 58:7, 58:22, 62:25, 125:16, 132:1 DC [1] - 2:10 de [1] - 77:14 dead [1] - 69:2 deal [5] - 23:8, 65:20, 66:17, 69:21, 74:13 dealing [2] - 30:10, 65:8 debate [13] - 4:12, 4:15, 12:8, 12:17, 18:22, 23:7, 28:23, 29:3, 31:24, 32:1, 116:8, 116:11 debates [3] - 7:15, 51:7, 65:18 decade [1] - 63:12 decennial [1] - 21:2</p>				

<p>23:2, 72:4 disease [1] - 14:6 disenfranchise [6] - 7:6, 11:24, 35:1, 65:4, 67:14, 116:15 disenfranchised [1] - 12:4 disenfranchisement [1] - 25:5 disenfranchising [5] - 45:12, 65:3, 67:17, 72:25, 73:1 disfranchise [1] - 49:13 disfranchised [2] - 50:6, 61:1 disfranchises [1] - 61:10 disfranchising [2] - 73:7, 73:8 dishonest [1] - 57:6 disproportionate [2] - 61:11, 79:18 disproportionately [2] - 67:16, 79:14 dispute [7] - 16:13, 16:21, 39:25, 40:8, 43:23, 44:1, 113:1 disputing [1] - 16:19 dissent [1] - 89:13 dissertation [1] - 48:19 dissolve [1] - 68:24 distinction [1] - 39:5 distort [1] - 85:1 district [25] - 20:3, 20:8, 33:1, 33:15, 34:5, 36:5, 69:18, 70:8, 99:4, 100:3, 100:5, 100:15, 101:8, 101:10, 101:11, 101:13, 102:2, 102:16, 103:18, 104:16, 117:23, 117:25, 118:15, 118:20, 118:22 District [16] - 8:4, 20:4, 20:9, 20:16, 21:1, 21:3, 50:18, 51:19, 52:5, 99:13, 100:11, 100:15, 103:5, 118:3, 118:24, 119:10 DISTRICT [3] - 1:1, 1:2, 1:14 districts [10] - 46:14, 46:15, 53:21, 53:22, 53:23, 53:25, 99:25, 100:9, 101:16</p>	<p>division [1] - 110:16 Division [1] - 2:8 Docket [1] - 1:3 Doctor [1] - 76:22 doctor [2] - 13:21, 13:25 doctor's [1] - 58:20 doctoral [1] - 48:19 document [8] - 17:7, 52:21, 94:1, 94:10, 111:12, 124:5, 128:15 documented [2] - 24:13, 92:18 documents [27] - 30:4, 30:8, 31:2, 31:8, 33:17, 33:25, 34:22, 74:13, 74:15, 74:19, 74:22, 78:4, 123:23, 124:15, 124:17, 124:21, 125:9, 125:24, 126:9, 127:17, 128:6, 128:17, 129:4, 129:7, 130:19, 131:10 domicile [3] - 125:14, 126:7, 126:9 dominance [4] - 55:21, 56:1, 56:11, 56:21 dominant [1] - 56:21 done [13] - 9:3, 14:19, 29:15, 30:25, 42:9, 47:1, 62:5, 70:8, 78:3, 111:21, 117:3, 120:24, 124:23 door [1] - 36:13 down [6] - 23:6, 24:10, 54:21, 69:6, 98:23, 108:5 DPS [15] - 4:9, 7:10, 7:14, 25:24, 28:1, 28:2, 33:20, 36:23, 40:11, 44:14, 44:16, 66:23, 77:11, 124:14, 124:16 Dr [56] - 47:22, 49:15, 50:21, 52:11, 52:17, 60:14, 64:14, 64:22, 68:3, 74:5, 76:11, 76:21, 77:2, 78:18, 80:7, 80:25, 81:20, 82:1, 82:4, 82:13, 84:8, 84:15, 85:22, 86:2, 88:10, 88:17, 90:1, 90:25, 92:2, 93:6, 94:25, 95:4, 96:19, 97:23, 98:19, 100:25, 101:4,</p>	<p>104:25, 105:10, 106:17, 106:21, 109:17, 110:8, 110:9, 111:18, 112:4, 112:6, 112:8, 114:12, 115:11, 117:6, 117:13, 118:12, 119:7, 120:21, 121:10 dramatic [1] - 70:19 drawn [3] - 50:19, 67:1, 117:25 Dred [4] - 83:4, 83:6, 83:23, 84:18 drew [2] - 52:4, 118:24 drilled [3] - 23:6, 23:12, 24:10 drive [3] - 10:5, 15:6, 18:6 driven [1] - 13:22 driver's [25] - 4:9, 5:6, 5:23, 7:10, 7:14, 9:24, 10:1, 10:6, 11:6, 13:2, 13:3, 13:17, 14:14, 14:25, 15:10, 16:3, 16:6, 17:22, 18:5, 26:1, 35:6, 123:16, 124:1, 124:3, 125:14 driveway [1] - 14:10 driving [7] - 13:24, 14:9, 16:19, 16:20, 18:2, 44:24, 108:19 drum [2] - 91:22, 94:22 duly [4] - 4:5, 19:16, 47:18, 122:8 Dunn [2] - 35:23, 35:24 DUNN [2] - 2:19, 2:19 during [29] - 7:15, 8:2, 8:7, 11:23, 12:25, 18:21, 21:2, 21:14, 21:16, 24:2, 25:7, 26:20, 27:13, 27:20, 28:23, 49:1, 55:13, 55:16, 56:2, 56:4, 60:20, 63:12, 64:15, 65:17, 93:2, 96:19, 100:15, 116:7 duty [3] - 43:16, 46:10, 85:6</p>	<p>editorial [7] - 106:9, 106:18, 107:8, 107:21, 109:2, 109:8, 109:9 editorials [5] - 105:14, 105:17, 105:24, 106:2, 108:4 educated [1] - 12:9 Education [1] - 19:24 education [3] - 4:21, 4:24, 59:8 EDUCATIONAL [1] - 3:3 effect [26] - 11:2, 43:6, 45:12, 54:12, 54:13, 61:4, 61:11, 65:3, 65:20, 65:22, 66:21, 67:8, 67:20, 73:19, 73:25, 75:11, 75:20, 75:21, 77:24, 79:17, 79:24, 86:17, 87:2 effectiveness [1] - 29:22 effects [7] - 49:4, 60:24, 60:25, 65:8, 66:18, 67:20, 75:1 effectuate [1] - 46:7 effort [4] - 33:18, 57:10, 66:9, 85:2 efforts [6] - 66:20, 69:10, 77:16, 77:17, 91:11, 92:19 EIC [3] - 35:6, 35:7, 35:12 eight [3] - 32:18, 48:25, 63:13 eight-box [1] - 48:25 eighth [1] - 54:7 either [10] - 32:19, 39:18, 40:1, 44:2, 56:16, 78:8, 89:25, 95:17, 97:9, 127:2 EI [3] - 96:13, 103:5, 103:13 elderly [3] - 10:5, 10:21, 61:8 elect [2] - 50:17, 104:10 Elected [1] - 19:24 electd [9] - 20:6, 46:10, 87:10, 100:16, 102:3, 117:24, 118:6, 118:21, 119:5 Election [1] - 125:23 election [37] - 24:8, 26:25, 40:20, 48:21, 49:2, 50:17, 52:1, 53:1, 55:22, 61:24, 62:1, 69:2, 69:18,</p>	<p>69:22, 70:21, 70:23, 87:20, 91:12, 94:16, 94:17, 95:9, 97:15, 97:17, 97:18, 122:24, 124:5, 124:8, 124:18, 125:8, 125:18, 125:25, 126:6, 126:17, 128:7, 129:17 Elections [5] - 21:10, 21:23, 22:1, 22:18, 98:4 elections [22] - 24:20, 25:4, 25:10, 25:12, 26:13, 30:2, 30:12, 46:1, 56:4, 56:6, 57:6, 61:18, 63:13, 63:14, 63:16, 73:17, 98:17, 98:23, 98:25, 100:16, 112:20, 118:25 electoral [13] - 11:10, 70:17, 70:19, 70:24, 71:1, 71:3, 71:7, 71:14, 71:16, 88:1, 89:20, 90:5, 109:21 electorate [5] - 56:2, 60:17, 74:22, 110:22, 119:23 eliminate [3] - 42:15, 42:21, 68:19 eliminated [1] - 41:22 elite [3] - 115:13, 115:15, 115:21 ELIZABETH [1] - 2:3 Ellis [4] - 58:5, 60:9, 62:22, 75:10 Ellis' [1] - 75:19 elsewhere [1] - 11:14 emergency [2] - 62:25, 63:1 emerging [1] - 56:10 emigrants [1] - 34:8 emphasis [2] - 90:15 empirically [2] - 83:25, 84:5 employ [1] - 85:3 employed [3] - 51:16, 51:17, 86:17 enabled [1] - 54:10 enacted [8] - 10:24, 87:7, 88:25, 106:12, 124:9, 126:19, 126:23 enactment [2] - 125:17, 126:19 end [11] - 6:7, 26:9, 58:5, 59:20, 61:24, 63:4, 68:11, 70:13,</p>
-----------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------	--------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------	------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------	-------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------	-----------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------

E

early [1] - 73:14
ease [1] - 75:16
easier [2] - 65:25, 97:25
easily [1] - 67:21
eat [1] - 6:9

<p>70:16, 74:24, 86:13 ended [2] - 58:18, 59:24 endlessly [1] - 59:22 endorsed [6] - 83:7, 83:9, 83:20, 83:21, 84:11, 84:12 ends [1] - 70:7 enforced [1] - 44:6 engaged [3] - 34:13, 60:10, 80:3 engagement [3] - 34:12, 34:15, 34:16 Engineering [1] - 122:19 ensure [2] - 27:14, 58:22 ensuring [1] - 40:23 enter [1] - 130:12 entered [1] - 55:12 entire [1] - 116:7 entirely [3] - 34:21, 125:10, 125:21 entitled [1] - 132:13 epic [1] - 85:3 epidemic [3] - 23:5, 69:15, 117:17 equal [1] - 104:10 equally [1] - 109:3 ERIC [2] - 1:5, 1:9 Eric [3] - 19:10, 47:8, 69:24 essence [2] - 63:18, 88:3 essentially [4] - 25:4, 53:8, 56:15, 97:1 establish [3] - 124:21, 125:14, 129:5 established [1] - 22:2 et [2] - 1:9, 85:21 ethnic [4] - 75:11, 77:15, 78:12, 100:5 ethnicity [2] - 29:18, 75:12 evasive [1] - 28:24 evening [1] - 132:2 event [1] - 111:8 events [1] - 56:25 eventually [1] - 51:22 evidence [50] - 12:2, 12:18, 13:13, 18:21, 18:22, 18:24, 24:1, 24:2, 26:7, 26:20, 27:10, 27:13, 45:3, 53:17, 58:19, 64:3, 65:17, 66:14, 66:15, 68:17, 70:18, 71:2, 71:4, 72:14, 73:9, 75:19, 75:22, 77:2, 77:4, 77:6, 77:21,</p>	<p>77:22, 78:9, 84:3, 88:24, 90:16, 90:22, 91:6, 92:15, 102:6, 103:7, 105:18, 106:4, 109:6, 114:21, 115:6, 120:23, 124:25, 125:6 evil [4] - 83:19, 83:22, 83:23, 84:14 ex [1] - 48:22 ex-confederate [1] - 48:22 exact [4] - 15:21, 33:3, 40:3, 106:9 exactly [3] - 54:20, 73:7, 88:16 EXAMINATION [13] - 4:6, 6:22, 18:19, 19:18, 36:2, 37:10, 38:7, 44:12, 47:20, 80:23, 117:11, 120:19, 122:9 examination [7] - 15:17, 36:19, 38:5, 41:25, 58:17, 127:3, 127:13 examine [4] - 25:11, 48:13, 48:14, 51:11 examined [3] - 51:5, 68:22, 68:23 examining [1] - 51:16 example [10] - 11:16, 12:3, 27:17, 49:21, 53:10, 63:21, 96:9, 105:23, 112:3, 114:17 examples [3] - 23:3, 94:16, 95:15 exceedingly [2] - 54:6, 70:23 exclusively [2] - 24:4, 24:5 excuse [4] - 41:17, 42:7, 45:11, 105:1 excused [2] - 18:17, 19:3 executed [2] - 59:16, 59:23 executive [1] - 45:25 Exhibit [18] - 10:18, 10:20, 11:17, 17:19, 52:14, 81:24, 88:19, 92:1, 93:16, 98:20, 100:13, 106:14, 110:6, 117:21, 124:21, 127:21, 127:22 exhibit [2] - 94:1, 128:17</p>	<p>exist [2] - 26:3, 30:13 existed [1] - 13:25 existence [2] - 27:8, 68:18 existing [2] - 5:18, 5:21 expand [4] - 26:18, 29:9, 30:20, 75:16 expense [2] - 33:25, 34:2 expensive [4] - 33:23, 92:20, 92:24, 93:8 experience [3] - 52:4, 99:20, 100:8 expert [10] - 48:11, 49:15, 50:11, 56:3, 78:1, 79:20, 109:6, 110:5, 110:11, 113:9 expiration [1] - 17:21 expire [5] - 14:4, 16:3, 16:8, 16:10, 16:13 expires [1] - 15:5 expiring [1] - 13:17 explain [5] - 10:4, 56:13, 57:11, 118:14, 119:19 explained [2] - 13:2, 13:16 explains [1] - 32:12 explanations [2] - 95:4, 95:5 explanatory [3] - 53:20, 54:3, 54:8 explicitly [1] - 115:1 express [1] - 110:18 expressing [2] - 86:13, 98:16 extensively [1] - 115:6 extent [6] - 26:2, 33:11, 54:18, 77:4, 116:22, 119:25 extreme [1] - 71:10 EZRA [1] - 2:12 Ezra [1] - 121:16</p>	<p>102:20, 102:24, 103:24, 104:7, 105:11, 107:16, 108:11, 110:11, 114:2, 116:18, 118:9, 124:2 factor [3] - 53:16, 54:8, 54:12 factors [8] - 52:23, 53:2, 54:19, 54:21, 56:13, 78:20, 81:11, 81:14 facts [5] - 54:1, 54:22, 55:20, 92:9, 92:12 fail [2] - 26:5, 115:18 failed [2] - 69:14, 91:17 failsafe [1] - 25:16 failure [1] - 78:5 fair [2] - 104:24, 115:16 fairly [2] - 33:4, 64:11 fake [3] - 25:20, 25:21, 25:23 fall [1] - 122:20 false [2] - 13:9, 13:14 familial [1] - 57:20 familiar [5] - 8:24, 54:15, 79:19, 88:24, 112:10 familiarize [1] - 12:7 family [1] - 57:21 far [1] - 25:13 Farmers [1] - 20:11 fast [2] - 10:8, 12:21 father [2] - 34:9 favor [10] - 32:23, 41:15, 42:24, 54:6, 98:8, 114:2, 114:22, 116:23, 119:16, 120:2 favorable [1] - 51:19 favor [4] - 43:21, 46:11, 56:19, 73:17 fear [1] - 34:25 federal [2] - 49:16, 52:5 felt [4] - 14:22, 28:20, 28:21, 60:2 few [5] - 7:2, 38:14, 81:18, 82:19, 126:4 fewer [1] - 70:3 fight [1] - 58:9 fighting [1] - 95:13 Figueroa [5] - 121:21, 122:1, 122:4, 127:4, 128:14 FIGUEROA [18] - 3:2, 121:21, 122:1, 122:10, 125:11,</p>	<p>125:13, 126:11, 126:13, 127:7, 127:14, 127:15, 127:19, 127:23, 128:1, 128:10, 128:12, 131:4, 131:15 figure [2] - 102:12, 127:4 figured [1] - 103:11 figures [1] - 33:3 filibuster [3] - 58:7, 59:17, 62:23 filibusterer [1] - 60:10 final [1] - 54:12 finally [4] - 62:25, 69:7, 72:8, 72:11 Finance [1] - 38:19 finance [2] - 38:18, 39:7 financial [1] - 33:23 findings [1] - 110:19 fine [1] - 95:7 finish [2] - 109:17, 131:6 firm [7] - 35:18, 35:19, 35:20, 35:24, 123:7, 125:4 first [28] - 6:16, 7:4, 22:6, 22:8, 23:20, 23:22, 38:15, 48:3, 48:19, 50:1, 53:16, 55:10, 55:21, 55:23, 57:2, 61:18, 62:25, 63:2, 63:3, 69:13, 73:9, 74:24, 87:6, 88:10, 92:15, 93:18, 124:7 fiscal [4] - 4:18, 4:20, 4:22, 5:9 FISCHER [1] - 4:4 Fischer [5] - 6:24, 10:21, 16:25, 17:18, 37:12 FISHER [1] - 2:6 five [5] - 9:18, 59:23, 63:13, 76:2, 76:8 five-day [1] - 59:23 flexibility [1] - 127:5 flip [1] - 86:8 flipping [1] - 11:22 floating [1] - 115:4 Floor [8] - 1:19, 2:24, 26:10, 27:24, 28:23, 34:19, 57:19, 77:17 FM [1] - 2:20 focus [8] - 29:19, 49:3, 65:21, 67:25, 82:4, 90:1, 93:6 focused [1] - 68:9</p>
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<p>focusing [2] - 34:25, 92:15</p> <p>followed [1] - 108:20</p> <p>following [1] - 26:7</p> <p>follows [4] - 4:5, 19:17, 47:19, 122:8</p> <p>FOR [1] - 1:2</p> <p>foregoing [1] - 132:11</p> <p>forgive [3] - 62:10, 76:22, 118:13</p> <p>form [3] - 44:5, 48:25, 96:8</p> <p>formed [1] - 115:4</p> <p>forms [8] - 11:8, 31:4, 41:3, 43:3, 93:22, 123:9, 123:13</p> <p>formula [1] - 68:14</p> <p>forth [3] - 89:18, 92:9, 101:1</p> <p>forward [7] - 12:18, 12:22, 61:13, 64:5, 68:5, 68:7, 73:24</p> <p>forwarding [1] - 10:8</p> <p>FOUNDATION [1] - 3:7</p> <p>foundation [1] - 34:16</p> <p>four [1] - 42:2</p> <p>frame [2] - 57:13, 67:24</p> <p>framers [1] - 75:9</p> <p>framework [10] - 81:15, 82:2, 82:3, 82:9, 82:11, 82:15, 82:18, 113:14, 113:18</p> <p>franchise [2] - 26:18, 34:17</p> <p>FRANK [1] - 2:23</p> <p>Frasier [1] - 75:24</p> <p>Fraud [1] - 39:13</p> <p>fraud [65] - 18:23, 22:21, 23:3, 23:4, 23:9, 23:11, 23:24, 24:3, 24:6, 24:9, 24:15, 24:23, 39:1, 57:5, 68:8, 68:15, 68:18, 68:21, 69:11, 69:15, 69:22, 70:4, 70:7, 70:10, 70:16, 87:20, 89:19, 90:4, 90:16, 90:21, 90:22, 91:5, 91:6, 91:12, 91:16, 91:21, 92:18, 92:19, 92:25, 93:4, 93:5, 93:13, 93:20, 94:3, 94:4, 94:7, 94:9, 94:11, 94:12, 94:14, 94:16, 94:17, 94:18, 94:22, 95:13, 95:15, 95:19, 95:25,</p>	<p>109:20, 112:20, 112:22, 117:18</p> <p>FREDERICK [1] - 1:16</p> <p>free [4] - 5:2, 31:5, 31:6, 124:17</p> <p>freely [1] - 39:17</p> <p>FREEMAN [1] - 2:4</p> <p>frequently [2] - 12:14, 39:21</p> <p>FRIED [1] - 2:23</p> <p>friend [1] - 123:6</p> <p>front [5] - 26:2, 32:11, 52:17, 127:2, 127:18</p> <p>Ft [1] - 96:10</p> <p>fuller [1] - 115:8</p> <p>fully [1] - 44:22</p> <p>Fund [1] - 19:24</p> <p>FUND [1] - 3:3</p> <p>funds [1] - 69:17</p> <p>furnish [1] - 46:3</p> <p>furnished [1] - 46:5</p> <p>furthermore [1] - 61:1</p> <p>future [2] - 13:18, 16:3</p> <p>futures [1] - 102:4</p>	<p>35:20</p> <p>GERALD [2] - 2:15, 2:16</p> <p>gin [2] - 115:14, 115:22</p> <p>given [9] - 22:23, 23:3, 70:10, 71:17, 89:8, 94:16, 109:19, 109:21, 110:2</p> <p>goal [1] - 40:24</p> <p>governance [1] - 11:13</p> <p>governor [1] - 63:1</p> <p>Governor [2] - 63:2, 71:22</p> <p>Governor's [1] - 69:17</p> <p>grab [1] - 9:9</p> <p>graduated [1] - 122:18</p> <p>grandmother [1] - 124:11</p> <p>grant [1] - 104:14</p> <p>great [7] - 24:5, 41:20, 65:20, 66:17, 69:21, 71:1, 80:20</p> <p>greater [1] - 113:2</p> <p>grew [1] - 55:21</p> <p>group [2] - 56:1, 66:24</p> <p>groups [3] - 75:12, 113:3, 116:24</p> <p>growing [1] - 98:10</p> <p>growth [1] - 55:16</p> <p>Guadeloupe [1] - 16:24</p> <p>guess [2] - 16:9, 89:7</p> <p>guesses [1] - 53:8</p> <p>guessing [1] - 16:15</p> <p>guesstimates [1] - 5:10</p>	<p>2:23</p> <p>hate [1] - 109:5</p> <p>HAVA [1] - 4:21</p> <p>heads [1] - 7:24</p> <p>hear [6] - 25:9, 27:10, 39:6, 72:21, 96:2, 125:2</p> <p>heard [8] - 26:7, 28:2, 41:19, 46:18, 104:24, 105:10, 119:15, 121:2</p> <p>hearing [8] - 22:3, 22:7, 22:8, 22:11, 22:12, 23:7, 25:18, 44:17</p> <p>hearings [9] - 21:19, 21:24, 22:9, 23:24, 24:2, 39:23, 51:7, 77:25, 93:3</p> <p>heart [3] - 26:14, 55:4, 78:23</p> <p>heavily [1] - 36:14</p> <p>Hebert [6] - 35:15, 35:17, 35:21, 35:25, 120:15, 120:17</p> <p>HEBERT [16] - 2:15, 2:16, 35:15, 35:20, 35:23, 36:3, 36:21, 36:22, 36:25, 80:10, 120:13, 120:17, 120:20, 121:8, 128:25, 131:8</p> <p>Heights [4] - 54:16, 54:19, 54:21, 54:22</p> <p>held [2] - 60:8, 71:24</p> <p>Help [2] - 4:24, 111:5</p> <p>help [3] - 17:12, 48:3, 53:2</p> <p>helped [3] - 97:18, 119:21</p> <p>helping [2] - 17:10, 17:13</p> <p>helps [2] - 79:4, 104:2</p> <p>herder [1] - 34:10</p> <p>Herman [1] - 125:4</p> <p>HERMAN [1] - 1:23</p> <p>high [14] - 21:2, 32:25, 33:4, 60:23, 92:20, 93:9, 128:18, 128:23, 130:2, 130:6, 130:11, 130:13, 131:11, 131:17</p> <p>highlight [2] - 91:25, 109:2</p> <p>highlighted [2] - 11:18, 84:25</p> <p>highlighting [1] - 106:25</p> <p>highly [1] - 91:15</p>	<p>himself [1] - 111:20</p> <p>hinge [1] - 119:25</p> <p>Hispanic [13] - 20:12, 20:16, 30:4, 55:11, 55:16, 55:18, 60:5, 60:21, 63:12, 63:22, 79:12, 110:18, 114:22</p> <p>Hispanic/white [1] - 56:8</p> <p>Hispanics [7] - 45:14, 110:17, 112:16, 112:18, 113:2, 113:15, 116:22</p> <p>historian [1] - 85:6</p> <p>historian's [2] - 88:15, 88:19</p> <p>historians [1] - 52:8</p> <p>historical [8] - 53:19, 53:20, 54:23, 55:5, 55:6, 85:14, 94:24, 113:20</p> <p>history [6] - 47:25, 51:9, 85:1, 85:16, 85:19, 120:22</p> <p>hold [9] - 22:9, 33:7, 57:22, 64:19, 93:2, 93:3, 94:8, 111:1, 118:11</p> <p>HOLDER [1] - 1:5</p> <p>Holder [3] - 19:10, 47:8, 107:9</p> <p>holding [1] - 69:17</p> <p>home [2] - 107:12, 129:1</p> <p>homeowner [1] - 79:24</p> <p>Honor [48] - 6:11, 6:15, 6:17, 15:16, 17:11, 17:16, 18:11, 19:7, 19:14, 28:12, 32:1, 35:3, 36:17, 37:2, 38:6, 41:24, 42:2, 42:12, 44:11, 46:23, 68:1, 76:10, 76:20, 80:10, 80:21, 85:24, 100:13, 109:11, 109:14, 110:25, 111:3, 117:10, 120:11, 120:13, 124:24, 125:3, 125:13, 125:20, 126:4, 127:10, 127:14, 127:23, 128:5, 128:12, 130:24, 131:4, 131:23, 132:4</p> <p>HONORABLE [3] - 1:12, 1:13, 1:13</p> <p>Honors [3] - 47:7,</p>
	<p>G</p> <p>GA [1] - 3:9</p> <p>gain [1] - 120:24</p> <p>Gallegos [2] - 58:13, 60:11</p> <p>Gallup [1] - 114:5</p> <p>GARZA [5] - 15:15, 18:11, 37:2, 37:6, 37:11</p> <p>Garza [8] - 37:6, 37:8, 41:14, 50:13, 51:17, 51:18, 79:19, 79:21</p> <p>gather [1] - 105:17</p> <p>gauging [1] - 45:21</p> <p>GEAR [1] - 2:5</p> <p>general [7] - 23:2, 23:10, 51:21, 77:8, 115:20, 122:24, 129:16</p> <p>General [16] - 1:6, 19:10, 19:11, 69:12, 91:11, 91:15, 91:19, 93:18, 94:6, 95:11, 95:14, 95:19, 95:23, 96:1, 96:5</p> <p>GENERAL [1] - 1:18</p> <p>General's [9] - 40:13, 69:23, 92:19, 92:24, 93:8, 93:20, 94:2, 94:21, 117:16</p> <p>generally [4] - 12:8, 22:21, 24:9, 104:9</p> <p>generate [1] - 93:21</p> <p>Gerald [2] - 35:15,</p>	<p>H</p> <p>half [3] - 29:9, 30:20, 59:23</p> <p>hamper [1] - 49:10</p> <p>hand [1] - 85:23</p> <p>handgun [4] - 11:7, 15:2, 33:13, 123:21</p> <p>happy [2] - 62:13, 127:7</p> <p>hard [3] - 79:7, 124:13, 132:3</p> <p>hardship [1] - 34:1</p> <p>Harless [10] - 32:2, 32:15, 70:14, 98:9, 98:17, 98:25, 99:12, 100:3, 100:16, 117:23</p> <p>Harris [3] - 45:15, 98:11, 119:3</p> <p>HARRIS [2] - 2:22,</p>		

<p>47:14, 81:23 hop [2] - 33:19 hope [2] - 111:15, 121:18 hospital [4] - 58:15, 58:16, 58:20, 58:21 hotel [1] - 130:7 hour [1] - 6:2 hourly [2] - 33:8, 33:24 hours [1] - 6:1 house [6] - 61:19, 61:20, 62:2, 62:12, 80:1 House [57] - 5:9, 19:11, 20:1, 20:5, 21:10, 21:14, 21:19, 22:22, 25:11, 25:13, 26:10, 26:20, 27:10, 27:13, 27:20, 27:24, 29:5, 32:5, 32:9, 32:11, 32:15, 32:22, 34:19, 37:15, 37:24, 38:16, 38:19, 39:12, 41:10, 41:21, 42:1, 42:14, 42:19, 43:15, 45:4, 45:11, 45:22, 45:23, 55:22, 58:2, 59:16, 59:17, 65:18, 70:14, 71:11, 72:6, 97:2, 97:5, 98:4, 98:5, 98:21, 99:13, 100:9, 100:11, 100:14, 100:17 houses [2] - 55:24, 60:18 Houston [6] - 2:21, 35:24, 58:6, 58:13, 79:12, 99:4 Hubbard [1] - 1:24 Hughes [7] - 6:15, 7:1, 18:9, 80:19, 81:1, 111:14, 118:14 HUGHES [47] - 1:22, 6:11, 6:14, 6:20, 6:23, 16:1, 17:5, 17:11, 17:16, 17:17, 18:8, 72:17, 76:10, 76:15, 76:18, 80:21, 80:24, 81:23, 81:25, 85:24, 86:1, 100:13, 100:18, 100:22, 100:24, 105:5, 105:9, 106:14, 106:16, 107:11, 107:13, 107:17, 107:20, 109:11, 109:14, 109:16, 111:6, 111:12, 111:15, 111:17,</p>	<p>117:2, 117:5, 117:22, 118:4, 118:16, 118:21, 119:1 human [1] - 53:5 Hunt [2] - 84:3, 84:4 Hunter [1] - 50:3</p> <p style="text-align: center;">I</p> <p>ID [106] - 5:20, 10:10, 12:8, 12:13, 12:16, 15:5, 23:1, 23:8, 23:20, 23:23, 24:18, 25:11, 25:14, 25:25, 26:5, 26:8, 27:8, 27:25, 28:1, 31:2, 31:4, 31:6, 33:21, 34:20, 41:3, 41:9, 43:3, 44:5, 44:25, 45:2, 45:7, 45:17, 58:24, 59:1, 59:11, 63:1, 69:13, 70:1, 71:25, 72:1, 72:7, 74:15, 76:4, 87:6, 87:7, 87:12, 87:17, 87:20, 87:25, 88:11, 88:25, 89:9, 89:18, 91:22, 92:17, 93:21, 94:3, 94:22, 94:23, 95:1, 95:2, 95:12, 95:24, 96:3, 97:19, 98:5, 105:24, 106:3, 107:22, 108:10, 108:18, 109:20, 109:22, 110:19, 111:7, 111:22, 112:13, 112:16, 113:15, 113:22, 114:23, 115:12, 115:20, 116:2, 116:4, 116:8, 116:14, 116:19, 116:23, 116:25, 117:14, 123:21, 123:25, 125:10, 126:8, 130:2, 130:6, 130:8, 130:11, 130:13, 130:15, 131:12, 131:17 idea [5] - 68:10, 76:7, 77:24, 108:5, 112:20 ideals [1] - 73:23 identical [1] - 108:17 identification [35] - 11:8, 17:20, 21:17, 21:24, 22:17, 22:20, 22:23, 29:19, 30:8, 30:15, 31:5, 31:12, 33:12, 43:24, 57:3, 59:6, 59:9, 74:18,</p>	<p>123:9, 123:14, 123:18, 124:6, 124:9, 124:18, 125:8, 125:15, 125:18, 125:25, 126:6, 126:14, 126:15, 126:16, 126:17, 128:6, 128:7 Identification [1] - 125:24 identifications [1] - 25:21 identified [8] - 35:19, 75:12, 87:16, 87:19, 87:24, 95:20, 109:22, 112:12 identify [7] - 21:15, 35:18, 37:4, 74:16, 74:23, 81:11, 100:12 identifying [2] - 12:14, 74:12 IDs [8] - 5:2, 25:20, 25:23, 76:5, 76:6, 77:9, 79:11 ignore [2] - 113:23, 114:1 IL [1] - 1:25 ill [4] - 107:25, 108:10, 108:12, 108:15 illegal [8] - 25:3, 25:10, 68:11, 71:23, 72:1, 72:4, 72:7, 72:11 illegally [1] - 69:8 imagine [3] - 15:23, 34:4, 46:13 immensely [1] - 46:14 immigrant [1] - 25:3 immoral [1] - 46:16 impact [18] - 27:21, 27:24, 29:21, 32:6, 32:10, 32:17, 33:10, 33:16, 37:15, 37:16, 38:2, 54:12, 54:13, 67:2, 77:5, 77:22, 78:13, 79:10 impermissibly [1] - 88:12 impersonation [13] - 22:20, 23:9, 23:11, 23:14, 23:15, 24:11, 24:13, 24:18, 25:2, 25:17, 26:2, 26:11, 26:12 implausible [2] - 70:23, 71:17 implementation [2] - 29:17, 45:19 implications [2] - 7:24, 10:13</p>	<p>implicitly [1] - 115:2 importance [1] - 55:9 important [30] - 20:19, 20:21, 20:23, 27:5, 27:6, 34:6, 34:7, 34:12, 39:5, 40:20, 45:15, 53:21, 53:23, 54:6, 54:7, 54:9, 54:12, 54:13, 55:8, 55:20, 57:16, 60:1, 69:10, 75:5, 91:14, 105:18, 105:22, 109:3, 126:5 impossible [5] - 50:16, 61:12, 62:19, 73:12, 73:15 in-person [25] - 18:23, 23:9, 24:13, 48:17, 68:11, 68:18, 70:4, 70:7, 90:22, 91:6, 91:16, 91:21, 92:18, 92:25, 93:13, 93:20, 94:2, 94:4, 94:7, 94:12, 94:14, 94:18, 94:21, 95:13, 95:24 INC [1] - 3:7 incidence [6] - 65:19, 66:17, 66:21, 77:8, 77:12 incident [1] - 60:12 incidents [2] - 23:13, 24:23 inclined [1] - 114:4 include [2] - 51:20, 76:14 includes [1] - 20:10 including [7] - 7:6, 31:8, 68:21, 72:8, 87:11, 113:1, 114:7 income [2] - 21:3, 21:5 incorporated [1] - 126:22 incorrect [1] - 125:6 increase [9] - 5:22, 26:14, 26:16, 26:17, 26:21, 27:11, 27:19, 87:25, 94:11 increasing [4] - 56:11, 89:19, 90:4, 109:20 increasingly [2] - 56:1, 56:8 indeed [1] - 120:9 indefinitely [1] - 59:18 independent [1] - 14:18 Indiana [8] - 26:22, 26:24, 27:5, 53:14, 66:16, 90:4, 90:23, 107:23</p>	<p>Indiana's [4] - 88:25, 89:9, 89:18, 108:18 indicated [2] - 7:13, 44:3 indicative [1] - 105:21 infer [1] - 77:20 inferences [1] - 67:1 inform [2] - 79:4, 93:3 information [7] - 78:6, 78:12, 78:16, 78:20, 100:8, 100:14, 130:21 informative [1] - 74:11 initial [4] - 23:18, 57:10, 57:12, 68:20 Injustice [5] - 81:7, 81:12, 84:23, 120:5, 121:2 Injustice" [1] - 52:24 inquiries [1] - 7:21 inquiry [4] - 5:24, 7:17, 69:25, 78:5 insisted [1] - 58:16 instance [1] - 115:19 instances [6] - 29:2, 70:2, 95:14, 95:19, 104:11, 115:18 instead [1] - 125:9 Institute [1] - 48:1 institutional [1] - 54:8 insurance [1] - 124:4 integrity [10] - 25:4, 25:10, 25:12, 26:13, 27:14, 27:19, 40:20, 68:13, 70:12, 70:21 intended [2] - 68:18, 79:18 Intent [1] - 51:23 intent [28] - 48:16, 49:5, 49:8, 49:19, 49:21, 50:8, 50:11, 51:21, 52:1, 53:3, 54:14, 65:22, 75:9, 78:10, 78:19, 78:20, 79:23, 88:7, 88:25, 102:9, 102:21, 106:6, 107:25, 108:10, 108:12, 108:15, 114:10, 120:4 intention [1] - 74:20 intentional [4] - 14:22, 89:24, 90:12, 104:3 intentionally [2] - 28:24, 80:3 intentions [5] - 48:14, 49:13, 52:25, 75:15, 114:3 interest [3] - 39:24, 90:21, 119:20</p>
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<p>interesting [7] - 25:15, 25:23, 72:5, 74:11, 75:8, 79:5, 79:21</p> <p>interests [3] - 73:24, 79:2</p> <p>interim [4] - 22:16, 22:19, 38:17, 39:7</p> <p>interned [1] - 123:6</p> <p>internships [2] - 123:6, 123:8</p> <p>interpretation [1] - 126:24</p> <p>interrupt [2] - 57:12, 64:7</p> <p>intervening [1] - 85:2</p> <p>INTERVENOR [1] - 122:7</p> <p>Intervenor [3] - 1:10, 2:12, 127:22</p> <p>Intervenor's [1] - 124:20</p> <p>INTERVENOR-DEFENDANT [1] - 122:7</p> <p>Intervenor-Defendants [1] - 1:10</p> <p>interveners [6] - 35:16, 120:18, 121:22, 121:24, 122:2, 122:3</p> <p>interview [1] - 7:23</p> <p>interviews [1] - 9:4</p> <p>introduce [2] - 19:8, 47:24</p> <p>introducing [1] - 29:12</p> <p>introduction [2] - 124:25, 125:5</p> <p>introductory [1] - 92:4</p> <p>invalid [1] - 54:25</p> <p>invalidly [1] - 25:6</p> <p>investigate [2] - 50:23, 91:11</p> <p>investigated [1] - 70:2</p> <p>investigation [7] - 69:14, 91:16, 91:17, 91:20, 93:20, 94:13, 94:21</p> <p>investigations [1] - 93:5</p> <p>invitation [3] - 22:4, 22:5, 39:21</p> <p>invite [1] - 39:22</p> <p>invited [1] - 39:19</p> <p>involved [6] - 22:16, 24:6, 33:17, 49:18, 49:20, 123:12</p> <p>involving [1] - 63:12</p> <p>ironclad [1] - 26:5</p>	<p>Irving [1] - 20:10</p> <p>issue [18] - 7:20, 13:6, 22:20, 24:17, 24:21, 34:6, 39:1, 42:3, 43:11, 51:16, 73:5, 73:7, 75:10, 96:15, 108:9, 108:19, 110:22, 127:7</p> <p>issued [1] - 17:25</p> <p>issues [10] - 12:10, 22:17, 23:16, 24:18, 28:2, 32:2, 51:12, 52:7, 105:19</p> <p>its's [1] - 116:14</p> <p>itself [8] - 29:2, 80:12, 99:9, 111:6, 111:12, 119:9, 119:10, 126:14</p> <p style="text-align: center;">J</p> <p>JA [2] - 29:8, 30:19</p> <p>JACOBSON [1] - 2:23</p> <p>January [1] - 20:6</p> <p>JENNIFER [1] - 2:4</p> <p>Jim [1] - 46:13</p> <p>job [1] - 33:24</p> <p>jobs [1] - 33:8</p> <p>Joe [1] - 104:15</p> <p>John [2] - 6:15, 7:1</p> <p>JOHN [2] - 1:16, 1:22</p> <p>joined [6] - 62:18, 82:23, 84:10, 84:17, 86:16</p> <p>JONATHAN [1] - 1:17</p> <p>Jorge [1] - 121:19</p> <p>Jose [2] - 37:6, 37:8</p> <p>JOSEPH [1] - 2:15</p> <p>JR [1] - 1:5</p> <p>Judge [7] - 19:4, 35:17, 37:5, 76:25, 79:22, 120:6, 120:16</p> <p>JUDGE [116] - 1:12, 4:2, 6:10, 6:13, 6:18, 6:21, 17:4, 17:6, 17:13, 18:9, 18:12, 18:15, 18:17, 19:2, 19:5, 19:8, 19:15, 28:13, 31:17, 31:19, 31:23, 35:4, 35:17, 35:22, 35:25, 36:19, 37:1, 37:4, 37:9, 38:4, 42:6, 46:24, 47:3, 47:10, 47:13, 47:15, 48:2, 48:6, 52:15, 64:7, 64:10, 64:18, 64:19, 64:22, 65:1, 65:7, 65:15, 65:23, 66:4, 67:5, 67:7, 67:10, 67:19, 67:24, 72:18, 72:19,</p>	<p>72:24, 73:4, 74:3, 76:16, 76:19, 76:21, 80:8, 80:11, 80:16, 85:25, 100:12, 100:20, 105:1, 105:7, 107:15, 107:19, 109:5, 109:12, 109:15, 111:1, 111:8, 111:14, 111:16, 117:9, 118:2, 118:7, 118:11, 118:18, 118:23, 119:4, 119:11, 120:12, 120:15, 121:9, 121:13, 121:23, 122:3, 125:1, 125:12, 126:2, 126:12, 126:25, 127:8, 127:11, 127:18, 127:21, 127:24, 128:4, 128:8, 128:11, 128:13, 128:21, 128:24, 131:1, 131:6, 131:16, 131:19, 131:21, 131:25, 132:5</p> <p>JUDGES [1] - 1:14</p> <p>judicial [3] - 79:3, 107:11, 107:15</p> <p>July [2] - 1:6, 17:3</p> <p>June [3] - 12:22, 44:3, 106:19</p> <p>jury [1] - 127:6</p> <p>JUSTICE [1] - 2:7</p> <p>Justice [21] - 47:9, 52:22, 81:10, 82:23, 82:24, 83:17, 84:7, 84:9, 84:16, 85:15, 86:12, 86:15, 86:24, 89:13, 90:14, 95:5, 96:20, 110:11</p> <p>Justice's [1] - 87:21</p> <p>justices [2] - 84:10, 84:17</p> <p>Justices [3] - 82:24, 83:18, 86:16</p> <p>justification [6] - 22:23, 22:25, 25:2, 25:7, 26:10, 26:15</p> <p>justifications [3] - 23:18, 24:15, 26:8</p> <p style="text-align: center;">K</p> <p>K-O-U-S-S-E-R [1] - 48:5</p> <p>keep [8] - 5:17, 62:17, 64:20, 65:24, 75:16, 76:17, 79:25, 105:4</p>	<p>Kennedy [3] - 82:24, 83:18, 86:16</p> <p>Kennie [2] - 35:15, 120:18</p> <p>KENNIE [1] - 1:9</p> <p>key [2] - 54:3, 54:4</p> <p>kill [1] - 62:15</p> <p>kind [12] - 6:10, 8:1, 12:2, 12:8, 12:13, 12:14, 81:2, 92:3, 100:8, 118:16, 118:18, 124:13</p> <p>kinds [3] - 51:12, 75:22, 94:17</p> <p>knowledge [3] - 44:4, 45:3, 54:24</p> <p>knowledgeably [1] - 12:9</p> <p>known [2] - 50:3, 54:15</p> <p>knows [1] - 83:6</p> <p>Kousser [56] - 47:5, 47:22, 48:5, 49:15, 50:21, 52:11, 52:17, 60:14, 64:14, 64:22, 68:3, 74:5, 76:21, 77:2, 78:18, 80:7, 80:25, 81:20, 82:1, 82:4, 82:13, 84:8, 84:15, 85:22, 86:2, 88:10, 88:17, 90:1, 90:25, 92:2, 93:6, 94:25, 95:4, 96:19, 97:23, 98:19, 100:25, 101:4, 104:25, 105:10, 106:17, 106:21, 109:17, 110:8, 111:18, 112:4, 112:6, 112:8, 114:12, 115:11, 117:6, 117:13, 118:12, 119:7, 120:21, 121:10</p> <p>Kousser's [1] - 76:11</p> <p>Kozinski [1] - 79:22</p> <p>Kozinski's [1] - 120:6</p> <p>KROUSSER [1] - 47:18</p> <p>KXAN [5] - 8:22, 9:4, 9:13, 9:23, 13:9</p> <p style="text-align: center;">L</p> <p>LA [1] - 51:23</p> <p>lack [2] - 71:3, 110:16</p> <p>lacked [2] - 70:20, 71:14</p> <p>ladder [2] - 21:8, 34:5</p> <p>language [3] - 20:22, 85:9, 93:10</p>	<p>large [8] - 24:20, 66:25, 67:14, 69:15, 70:6, 72:10, 74:12</p> <p>larger [2] - 42:24, 96:25</p> <p>largest [1] - 36:9</p> <p>last [11] - 17:25, 21:2, 47:10, 58:7, 62:23, 76:2, 82:19, 84:21, 84:22, 90:17, 109:17</p> <p>late [4] - 73:14, 73:22, 106:20, 107:1</p> <p>later.. [1] - 76:17</p> <p>Latina [1] - 77:14</p> <p>Latino [7] - 19:22, 19:23, 50:17, 56:9, 73:22, 85:21, 102:4</p> <p>Latinos [2] - 33:15, 56:17</p> <p>laudable [1] - 40:24</p> <p>launched [1] - 69:14</p> <p>law [42] - 4:25, 7:24, 11:24, 14:11, 35:18, 35:19, 35:20, 35:24, 41:1, 51:20, 53:11, 53:13, 53:14, 53:21, 64:5, 66:18, 66:21, 67:3, 68:5, 87:7, 87:12, 87:17, 87:20, 87:25, 88:11, 88:25, 89:9, 89:18, 97:19, 101:24, 107:22, 108:10, 109:20, 109:22, 109:23, 113:15, 113:16, 114:2, 114:3, 116:23, 123:6, 125:4</p> <p>Law [1] - 37:8</p> <p>lawful [2] - 46:11, 46:12</p> <p>laws [12] - 46:13, 48:21, 48:23, 48:25, 49:2, 49:9, 52:1, 53:1, 92:17, 95:9, 108:17</p> <p>lawsuits [1] - 49:24</p> <p>lawyers [1] - 34:12</p> <p>lays [1] - 32:12</p> <p>leader [1] - 77:13</p> <p>leadership [2] - 60:8, 110:20</p> <p>leading [5] - 36:18, 56:25, 72:17, 130:24, 131:1</p> <p>leads [1] - 85:16</p> <p>learn [3] - 7:23, 45:6, 52:9</p> <p>learned [2] - 14:20, 24:2</p> <p>leash [1] - 90:2</p>
---------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------	-------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------	-----------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------	--------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------	--------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------

<p>least [9] - 11:22, 30:12, 57:17, 61:22, 66:16, 76:25, 77:18, 113:4, 127:9</p> <p>leave [2] - 33:18, 33:24</p> <p>leaving [1] - 62:5</p> <p>led [1] - 69:11</p> <p>left [2] - 50:16, 101:4</p> <p>legacies [1] - 85:3</p> <p>LEGAL [1] - 3:2</p> <p>legal [1] - 77:9</p> <p>legislation [6] - 10:24, 21:15, 21:24, 37:17, 40:2, 65:20</p> <p>Legislative [4] - 19:25, 27:22, 29:1, 37:7</p> <p>legislative [21] - 4:12, 7:15, 8:2, 8:8, 42:3, 49:18, 50:11, 51:7, 53:3, 58:16, 58:18, 59:20, 60:17, 68:10, 97:10, 109:4, 110:2, 110:4, 115:2, 118:4, 120:21</p> <p>legislator's [1] - 78:19</p> <p>legislators [5] - 60:5, 60:7, 75:6, 77:21, 115:5</p> <p>legislature [42] - 4:18, 21:14, 21:17, 22:6, 23:2, 23:21, 23:22, 28:4, 31:20, 37:16, 37:19, 37:21, 38:1, 39:22, 46:4, 48:15, 55:25, 60:20, 61:20, 61:21, 62:3, 62:24, 65:2, 66:5, 68:14, 68:17, 68:21, 69:9, 71:5, 72:15, 75:3, 75:15, 77:3, 77:4, 78:11, 87:11, 89:22, 90:6, 101:20, 106:10, 118:5, 119:14</p> <p>legislature's [1] - 79:1</p> <p>legislatures [2] - 49:5, 60:22</p> <p>legitimacy [3] - 102:19, 103:15, 103:21</p> <p>legitimate [2] - 102:10, 102:12</p> <p>length [2] - 84:6, 99:19</p> <p>less [4] - 25:9, 53:19, 78:4, 110:18</p> <p>Lessons [1] - 51:23</p> <p>Leticia [1] - 77:14</p>	<p>level [1] - 35:12</p> <p>levels [2] - 111:21, 112:13</p> <p>liaison [2] - 121:17</p> <p>LIBERTIES [1] - 3:7</p> <p>license [35] - 4:9, 5:7, 5:23, 7:10, 7:15, 9:24, 10:1, 10:6, 11:7, 13:2, 13:3, 13:17, 14:1, 14:3, 14:14, 14:20, 14:25, 15:2, 15:5, 15:10, 16:3, 16:6, 16:7, 16:18, 17:1, 17:22, 18:3, 26:1, 35:6, 123:16, 123:20, 124:1, 124:3, 125:14</p> <p>licenses [2] - 18:5, 33:13</p> <p>Lieutenant [2] - 63:2, 71:22</p> <p>life [1] - 34:10</p> <p>light [2] - 21:5, 70:4</p> <p>likely [4] - 10:22, 43:4, 78:4, 119:22</p> <p>Lillian [1] - 121:4</p> <p>limit [2] - 66:6, 90:2</p> <p>limits [1] - 82:5</p> <p>line [5] - 33:20, 71:10, 86:2, 86:5, 86:8</p> <p>lines [2] - 53:21, 53:22</p> <p>list [8] - 34:21, 63:3, 69:8, 70:6, 127:16, 127:24, 129:5, 129:8</p> <p>listed [1] - 128:17</p> <p>listening [1] - 40:16</p> <p>lists [2] - 95:11, 124:21</p> <p>literacy [2] - 48:24, 48:25</p> <p>litigation [1] - 99:20</p> <p>live [1] - 7:11</p> <p>liver [2] - 58:14, 58:19</p> <p>LLP [4] - 1:23, 2:12, 2:23, 121:16</p> <p>local [7] - 41:23, 42:15, 42:22, 59:21, 69:17, 93:3, 94:9</p> <p>located [1] - 20:8</p> <p>location [1] - 23:10</p> <p>look [25] - 17:14, 17:22, 27:1, 31:24, 52:3, 53:17, 54:5, 54:9, 61:1, 66:8, 66:14, 74:5, 84:21, 88:5, 88:17, 93:4, 100:2, 100:5, 101:2, 101:17, 102:13, 107:14, 118:15, 127:2, 127:16</p>	<p>looked [16] - 16:6, 24:21, 51:7, 51:8, 51:10, 52:5, 87:4, 99:9, 101:15, 101:16, 103:8, 103:10, 114:6, 120:23</p> <p>looking [8] - 15:24, 18:7, 25:25, 75:2, 86:2, 94:6, 94:8, 107:17</p> <p>looks [3] - 17:15, 74:8, 74:25</p> <p>Los [1] - 50:13</p> <p>losing [2] - 55:18, 70:25</p> <p>lost [2] - 70:24, 71:7</p> <p>love [1] - 127:11</p> <p>low [1] - 33:13</p> <p>lower [5] - 30:6, 33:11, 61:19, 61:20, 62:2</p> <p>lowest [2] - 21:7, 34:4</p> <p>Luis [3] - 121:21, 122:1, 122:4</p> <p>LUIS [1] - 3:2</p> <p>lunch [4] - 4:8, 6:9, 6:15, 7:1</p>	<p>116:24</p> <p>manner [1] - 49:2</p> <p>map [3] - 20:17, 118:24</p> <p>MARANZANO [1] - 2:4</p> <p>March [6] - 8:19, 9:2, 9:13, 9:23, 14:1, 95:20</p> <p>Margo [1] - 41:14</p> <p>marked [7] - 10:17, 11:17, 17:19, 81:24, 88:18, 93:15, 98:19</p> <p>marks [1] - 83:12</p> <p>marshaling [1] - 106:4</p> <p>Martinez [7] - 6:24, 10:21, 16:25, 17:18, 31:1, 31:10, 37:12</p> <p>MARTINEZ [1] - 4:4</p> <p>Mary's [2] - 122:21, 129:18</p> <p>matching [1] - 66:24</p> <p>materials [2] - 51:5, 51:11</p> <p>matter [7] - 23:10, 39:23, 64:8, 107:18, 115:12, 125:10, 132:13</p> <p>matters [2] - 104:1, 109:10</p> <p>MATTHEW [1] - 1:16</p> <p>Maxwell [1] - 40:13</p> <p>MC-059 [1] - 1:19</p> <p>McGeehan [2] - 40:8, 44:20</p> <p>MCKENZIE [1] - 1:16</p> <p>mean [13] - 8:6, 11:9, 25:13, 62:10, 66:12, 67:15, 82:13, 101:10, 103:1, 108:3, 114:3, 114:9, 114:10</p> <p>means [5] - 5:3, 22:19, 85:17, 85:18</p> <p>meant [7] - 49:8, 49:10, 62:3, 73:8, 74:20, 85:19, 101:14</p> <p>measurably [1] - 110:18</p> <p>mechanism [2] - 25:16, 34:23</p> <p>media [9] - 7:23, 8:13, 10:12, 11:13, 11:14, 12:9, 12:12, 12:16, 116:16</p> <p>medical [1] - 14:16</p> <p>meet [1] - 47:3</p> <p>meetings [2] - 93:3, 94:9</p> <p>member [10] - 19:22, 19:24, 20:1, 20:5,</p>	<p>22:18, 39:12, 39:19, 46:22, 87:11, 119:16</p> <p>members [35] - 7:23, 14:11, 22:5, 22:6, 25:21, 26:5, 27:22, 28:3, 28:5, 29:1, 31:19, 32:22, 37:14, 37:16, 37:20, 37:25, 38:1, 39:22, 40:15, 41:10, 46:3, 57:7, 57:8, 57:9, 60:11, 63:8, 66:4, 75:4, 77:7, 79:17, 97:2, 97:5, 101:20, 104:22, 120:1</p> <p>memory [1] - 9:6</p> <p>mention [9] - 80:16, 94:4, 94:6, 94:12, 94:22, 95:1, 95:2, 95:3, 95:8</p> <p>mentioned [8] - 81:4, 81:7, 84:17, 91:10, 95:24, 95:25, 96:17</p> <p>mentioning [1] - 39:8</p> <p>MEREDITH [1] - 2:3</p> <p>merely [1] - 29:22</p> <p>message [2] - 115:14, 116:13</p> <p>met [2] - 7:1, 38:11</p> <p>metaphor [1] - 79:23</p> <p>method [1] - 51:24</p> <p>methodologies [1] - 51:15</p> <p>methodology [8] - 51:6, 51:16, 51:17, 52:12, 54:18, 54:24, 55:2, 87:5</p> <p>MEXICAN [1] - 3:2</p> <p>Mexican [4] - 19:25, 27:22, 29:1, 37:6</p> <p>Mexico [1] - 34:8</p> <p>Michael [1] - 19:21</p> <p>microphone [5] - 32:8, 32:11, 32:13, 32:14, 125:1</p> <p>middle [4] - 62:17, 76:22, 79:10, 79:11</p> <p>might [13] - 5:14, 9:5, 21:22, 27:2, 28:15, 34:21, 51:25, 54:4, 77:24, 112:17, 118:13, 118:14</p> <p>military [2] - 15:5, 123:21</p> <p>million [5] - 4:20, 4:23, 69:16, 76:2, 76:8</p> <p>millions [1] - 10:22</p> <p>mind [6] - 14:13, 14:14, 26:4, 27:15,</p>
--------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------	--------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------	----------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------	------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------	------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------

<p>105:2, 106:13 mindful [1] - 17:12 minimum [1] - 86:25 minorities [21] - 43:4, 60:22, 61:7, 61:9, 61:12, 63:19, 65:4, 67:14, 67:17, 71:12, 73:1, 73:14, 75:4, 78:4, 79:18, 104:10, 104:22, 112:1, 114:19, 116:15, 119:24 minority [57] - 7:6, 26:23, 27:21, 27:25, 28:3, 29:20, 30:7, 32:6, 32:10, 37:16, 38:1, 41:9, 41:10, 45:15, 56:10, 57:8, 60:8, 60:11, 63:7, 63:8, 63:9, 63:15, 63:19, 63:24, 63:25, 64:2, 66:6, 75:6, 77:5, 77:7, 77:13, 77:21, 77:22, 77:25, 79:15, 79:17, 88:7, 101:20, 102:1, 102:7, 102:13, 102:15, 102:24, 103:11, 103:13, 103:16, 103:17, 103:22, 103:24, 104:6, 104:10, 104:12, 104:15, 104:22, 114:13 minority-preferred [1] - 102:1 minus [1] - 5:17 minute [9] - 35:16, 36:4, 46:6, 62:23, 65:24, 111:2, 115:12, 118:11, 118:23 minutes [4] - 59:19, 59:23, 131:22, 132:1 miscegenation [1] - 50:6 mischaracterized [1] - 14:24 misleading [1] - 111:4 misrepresent [1] - 15:6 misspoke [1] - 42:19 misunderstand [1] - 127:12 MITCHELL [1] - 1:17 model [2] - 108:20, 115:2 modeled [1] - 107:22 models [1] - 53:5 mom [2] - 14:17, 16:6</p>	<p>mom's [1] - 16:2 moment [2] - 46:18, 80:22 money [4] - 4:19, 4:21, 5:1, 33:24 monies [1] - 4:24 month [2] - 38:11, 58:15 months [1] - 69:4 MORGAN [2] - 47:18, 48:4 Morgan [1] - 48:4 morning [1] - 131:3 Morning [9] - 69:4, 96:12, 105:24, 106:8, 106:17, 107:16, 108:3, 109:1, 109:8 Mortara [1] - 90:2 MORTARA [4] - 1:21, 80:14, 131:23, 132:4 most [12] - 7:18, 50:13, 60:7, 60:10, 69:10, 72:4, 79:5, 79:9, 110:14, 119:22, 126:5 mostly [3] - 18:24, 79:16 mother [16] - 9:25, 10:22, 12:3, 13:2, 14:6, 14:7, 14:18, 14:22, 14:23, 15:8, 15:10, 15:22, 34:8, 34:11, 124:11 mother's [4] - 13:17, 16:23, 17:8, 17:21 motion [1] - 32:3 motivated [1] - 87:12 motive [6] - 65:9, 65:10, 67:15, 92:11, 92:12, 92:14 motives [1] - 53:12 move [5] - 63:4, 92:8, 109:10, 127:13, 131:4 moved [3] - 21:18, 25:2, 80:2 moving [1] - 64:8 MR [123] - 6:11, 6:14, 6:20, 6:23, 15:15, 16:1, 17:5, 17:11, 17:16, 17:17, 18:8, 18:11, 28:11, 35:15, 35:20, 35:23, 36:3, 36:17, 36:21, 36:22, 36:25, 37:2, 37:6, 37:11, 38:6, 38:8, 42:2, 42:12, 42:13, 44:8, 47:5, 47:7, 47:12, 47:14, 47:17,</p>	<p>47:21, 48:7, 52:13, 52:16, 64:9, 64:21, 68:1, 68:2, 72:17, 74:4, 76:10, 76:15, 76:18, 76:20, 76:24, 77:1, 80:6, 80:10, 80:14, 80:21, 80:24, 81:23, 81:25, 85:24, 86:1, 100:13, 100:18, 100:22, 100:24, 105:5, 105:9, 106:14, 106:16, 107:11, 107:13, 107:17, 107:20, 109:11, 109:14, 109:16, 110:25, 111:3, 111:6, 111:12, 111:15, 111:17, 117:2, 117:5, 117:10, 117:12, 117:21, 117:22, 118:4, 118:8, 118:16, 118:21, 119:1, 119:6, 119:13, 120:10, 120:13, 120:17, 120:20, 121:8, 121:16, 121:21, 122:1, 122:10, 125:11, 125:13, 126:4, 126:11, 126:13, 127:7, 127:14, 127:15, 127:19, 127:23, 128:1, 128:10, 128:12, 128:14, 128:25, 131:4, 131:8, 131:15, 131:23, 132:4 MS [29] - 4:3, 4:7, 6:4, 6:8, 18:14, 18:18, 18:20, 19:1, 19:7, 19:9, 19:14, 19:19, 28:18, 29:8, 29:11, 30:19, 30:22, 32:4, 35:2, 41:24, 44:11, 44:13, 46:23, 124:24, 125:3, 125:20, 127:10, 128:5, 130:24 multiperson [1] - 59:17 multiplied [1] - 76:9 multiplies [1] - 73:25 municipality [1] - 36:9 must [5] - 53:12, 53:15, 59:15, 125:15, 125:25</p>	<p>N NAACP [1] - 37:7 naive [1] - 115:6 name [17] - 9:11, 9:16, 16:23, 16:24, 19:9, 19:20, 41:13, 47:7, 47:10, 48:2, 88:23, 89:2, 89:5, 89:14, 121:25, 122:11, 122:12 names [1] - 83:18 NANCY [1] - 3:6 NAPIER [1] - 1:17 narrative [2] - 97:13, 98:13 narrowing [1] - 74:18 nastier [3] - 58:10, 58:11, 58:12 nasty [1] - 58:9 nation [1] - 83:12 National [1] - 19:23 national [5] - 10:9, 11:3, 15:4, 15:12, 108:18 nature [2] - 36:18, 111:4 near [3] - 13:18, 16:3, 112:23 necessarily [2] - 29:21, 115:15 necessity [2] - 64:5, 68:5 need [10] - 10:3, 17:4, 17:8, 18:5, 18:24, 34:17, 80:21, 82:4, 109:2, 127:8 needed [3] - 5:19, 6:9, 62:16 needs [2] - 14:12, 124:12 negative [2] - 8:6, 32:6 neighborhood [1] - 80:2 neutral [7] - 87:16, 87:19, 87:24, 88:3, 90:5, 109:18, 115:23 never [8] - 14:19, 28:21, 46:5, 70:18, 77:18, 104:4, 105:2, 113:10 nevertheless [3] - 39:9, 42:25, 113:16 New [3] - 2:24, 2:25, 11:13 new [4] - 5:18, 20:17, 26:15, 64:8 newly [4] - 10:24, 30:4, 126:22, 126:23</p>	<p>news [5] - 12:19, 13:12, 93:17, 94:20, 96:16 News [9] - 69:4, 96:12, 105:24, 106:9, 106:17, 107:16, 108:3, 109:1, 109:8 newspaper [6] - 51:8, 69:6, 96:13, 105:10, 105:11, 108:11 newspapers [6] - 96:9, 96:11, 96:12, 104:24, 106:3, 116:18 next [2] - 24:16, 36:13 nice [5] - 6:16, 6:18, 35:25, 47:3, 132:2 Nichols [1] - 69:24 Nicole [1] - 130:22 night [1] - 40:3 nine [3] - 59:23, 92:3, 92:8 nine-and-a-half [1] - 59:23 NJ [1] - 2:14 nobody [3] - 57:5, 71:6, 119:4 non [4] - 55:11, 55:18, 60:21, 74:15 non-Hispanic [3] - 55:11, 55:18, 60:21 non-photo [1] - 74:15 noncitizen [3] - 24:19, 24:23, 25:3 none [1] - 27:15 nonphoto [1] - 41:3 nonvoting [1] - 39:19 normal [2] - 42:7, 54:10 normally [1] - 51:11 Northern [1] - 34:9 northern [1] - 98:10 note [6] - 4:18, 4:20, 4:22, 27:5, 53:6, 111:10 notes [1] - 5:9 nothing [2] - 43:20, 46:23 notice [2] - 107:12, 107:15 noticed [1] - 12:12 notion [1] - 101:19 November [1] - 122:24 now.. [1] - 17:12 number [12] - 5:19, 10:12, 24:8, 34:7, 40:3, 41:10, 56:20, 67:14, 74:12, 94:11, 105:14, 106:2 Number [2] - 30:21,</p>
-----------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------	---------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------	------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------	---------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------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<p>99:13 numbers [8] - 24:20, 24:24, 26:23, 26:25, 43:10, 72:10, 76:4 numerous [1] - 105:11 NW [2] - 2:9, 3:8 NWB [1] - 2:9 NWB-Room [1] - 2:9 NY [1] - 2:25</p>	<p>66:23, 69:24, 76:1, 77:15, 78:15 officer [3] - 30:2, 30:12, 46:1 offices [8] - 4:9, 4:14, 5:7, 5:23, 33:20, 36:23, 55:25 OFFICIAL [1] - 132:9 Official [2] - 1:6, 3:11 official [6] - 16:12, 16:17, 16:20, 17:20, 24:7, 66:23 officials [7] - 5:25, 24:8, 69:18, 87:10, 93:3, 94:9 Officials [1] - 19:24 often [8] - 12:18, 28:3, 32:1, 34:18, 46:6, 55:14, 57:21, 63:20 old [3] - 20:17, 81:2, 122:15 omission [1] - 14:22 once [1] - 85:5 One [2] - 2:24, 128:2 one [77] - 6:2, 10:22, 11:16, 11:17, 14:17, 18:7, 18:18, 20:24, 20:25, 21:6, 21:8, 22:13, 23:8, 25:18, 25:19, 28:5, 34:13, 35:4, 35:16, 37:2, 37:18, 39:3, 41:4, 50:13, 51:25, 53:3, 54:4, 57:19, 57:22, 57:25, 58:11, 58:13, 62:3, 62:9, 62:20, 62:22, 64:19, 64:20, 66:8, 66:19, 68:7, 69:7, 70:3, 71:9, 72:4, 73:12, 73:19, 75:8, 75:24, 79:5, 80:22, 82:7, 87:19, 88:24, 93:23, 93:24, 94:12, 97:17, 97:18, 106:8, 107:23, 109:17, 111:1, 111:25, 112:3, 112:15, 113:22, 117:14, 118:12, 118:21, 124:14, 126:5, 126:14, 127:3, 131:16 one's [1] - 108:19 one-third [2] - 57:19, 57:22 ones [3] - 25:22, 25:23, 124:15 open [8] - 9:22, 22:5, 39:20, 40:15, 62:6, 67:4, 75:3, 108:16</p>	<p>opened [1] - 86:3 operation [1] - 6:1 opined [1] - 119:14 opinion [30] - 43:11, 51:4, 74:7, 78:18, 79:4, 79:21, 83:19, 83:20, 84:7, 84:10, 84:17, 86:13, 86:16, 87:7, 87:10, 91:9, 91:14, 91:15, 92:14, 95:18, 105:21, 107:16, 108:25, 115:3, 115:7, 116:21, 116:25, 120:6 opinions [6] - 81:16, 83:11, 83:14, 83:23, 98:14, 119:25 opponents [3] - 5:6, 12:13, 40:1 opportunity [1] - 131:3 oppose [2] - 97:6, 106:3 opposed [4] - 8:7, 45:22, 49:11, 108:11 opposing [1] - 105:24 opposition [4] - 8:7, 8:11, 8:14, 49:14 oppression [1] - 24:7 order [9] - 22:10, 22:11, 31:4, 52:10, 76:4, 88:12, 91:22, 93:21, 94:3 orders [1] - 58:20 organizations [1] - 19:22 origin [1] - 20:23 ought [1] - 57:4 ousted [2] - 98:1, 98:8 outcome [2] - 61:14, 61:16 outlets [2] - 10:12, 13:13 outside [4] - 41:24, 68:9, 78:2, 99:4 outspoken [1] - 8:2 overall [1] - 91:14 overlap [1] - 54:18 overwhelming [3] - 56:6, 108:24, 114:8 overwhelmingly [13] - 63:20, 70:25, 98:10, 99:4, 99:7, 99:10, 100:3, 101:8, 101:13, 101:14, 101:15, 118:10, 119:10 own [3] - 33:2, 36:14, 52:4</p>	<p>P P.C [1] - 2:16 P.M [2] - 1:6, 1:11 p.m [4] - 1:10, 6:2, 64:17, 132:6 package [2] - 42:24, 96:25 page [19] - 11:22, 29:9, 30:20, 69:5, 76:14, 81:19, 81:21, 82:1, 82:7, 82:10, 82:14, 82:17, 84:1, 86:2, 86:3, 86:5, 86:8, 92:2, 97:22 pages [7] - 76:15, 76:16, 81:19, 82:7, 82:19, 84:1, 89:13 Palenchar [1] - 125:4 PALENCHAR [1] - 1:23 paper [8] - 51:20, 51:22, 60:13, 66:19, 68:25, 74:8, 92:10, 92:14 paragraph [8] - 84:21, 84:22, 86:5, 92:3, 92:8, 93:7, 93:13, 97:25 paragraphs [3] - 83:2, 87:4, 92:4 parents [1] - 129:7 Parkinson's [1] - 14:6 part [31] - 4:15, 42:23, 43:11, 50:19, 51:5, 54:22, 55:18, 63:17, 74:5, 76:25, 89:3, 89:7, 89:10, 89:11, 89:12, 90:18, 91:9, 91:14, 96:25, 97:13, 97:21, 98:13, 99:24, 101:17, 106:3, 108:25, 110:1, 110:2, 120:5, 125:21, 128:5 Part [1] - 128:2 participants [2] - 54:7, 71:19 participated [4] - 10:9, 11:20, 22:19, 88:15 participating [1] - 10:23 participation [1] - 4:12 particular [20] - 39:23, 49:6, 53:10, 53:14, 53:25, 54:9, 55:9, 56:17, 61:4, 61:18, 65:17, 66:14, 73:23, 77:10, 78:3, 91:21,</p>	<p>93:22, 105:22, 114:2, 119:5 particularly [21] - 52:1, 53:22, 54:13, 55:8, 55:20, 57:8, 57:16, 60:21, 61:10, 68:9, 74:21, 75:8, 75:23, 77:7, 77:13, 85:14, 89:11, 89:12, 90:17, 94:5, 112:1 parties [4] - 49:11, 49:12, 49:14, 57:8 partisan [12] - 60:14, 60:24, 65:11, 66:9, 67:11, 73:8, 73:19, 73:25, 79:2, 88:25, 89:25, 120:24 partisanship [1] - 60:24 partly [2] - 102:8, 102:20 parts [2] - 92:5, 126:21 party [4] - 56:22, 72:10, 73:21, 115:23 Party [10] - 49:11, 49:12, 55:21, 55:22, 56:7, 56:8, 57:9, 110:20, 119:21 Paso [3] - 96:13, 103:5, 103:13 pass [5] - 54:11, 58:2, 58:23, 97:19, 113:16 passage [13] - 7:19, 48:21, 52:25, 56:12, 56:13, 56:25, 60:6, 67:3, 71:12, 77:19, 107:7, 114:11, 126:20 passed [18] - 42:14, 49:9, 53:11, 53:13, 53:14, 53:15, 58:1, 61:17, 63:6, 68:4, 71:15, 73:18, 73:21, 88:11, 101:24, 106:5, 107:23, 108:24 Passing [1] - 108:17 passing [5] - 48:15, 64:6, 68:5, 70:11, 119:20 passport [3] - 11:7, 15:3, 123:21 passports [1] - 33:12 past [3] - 19:23, 92:8, 95:14 Patricia [6] - 32:15, 98:9, 98:17, 98:25, 99:12, 100:3 PATRICK [1] - 1:15</p>
------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------	------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------	-----------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------	--------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------	--------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------

<p>pausing [1] - 72:19</p> <p>pay [2] - 33:24, 41:7</p> <p>PC [1] - 35:21</p> <p>Peachtree [1] - 3:8</p> <p>Pena [4] - 41:14, 72:9, 103:1, 103:25</p> <p>penetration [4] - 30:4, 30:7, 33:12, 44:25</p> <p>Pennsylvania [1] - 2:9</p> <p>people [33] - 5:4, 18:5, 18:25, 27:16, 31:2, 35:1, 45:1, 45:7, 50:6, 56:20, 60:10, 61:4, 61:5, 61:6, 61:8, 61:11, 66:4, 69:2, 69:5, 70:9, 73:20, 73:22, 76:3, 76:5, 76:7, 77:9, 78:2, 79:6, 79:13, 79:14, 80:2, 85:20, 119:22</p> <p>per [2] - 21:3, 21:5</p> <p>percent [13] - 20:13, 20:18, 33:15, 60:18, 63:22, 69:20, 76:3, 76:8, 101:9, 110:16, 112:16, 112:24, 113:3</p> <p>percentage [4] - 20:12, 20:14, 24:5, 24:11</p> <p>percentages [2] - 20:16, 33:4</p> <p>perhaps [5] - 50:13, 69:7, 70:2, 70:3</p> <p>Perhaps [1] - 110:14</p> <p>period [8] - 23:18, 23:25, 24:1, 48:22, 55:13, 55:17, 56:5, 60:20</p> <p>permit [1] - 44:5</p> <p>permitted [1] - 39:15</p> <p>Perry [1] - 63:1</p> <p>person [31] - 18:23, 23:9, 24:13, 31:5, 41:1, 48:17, 68:11, 68:18, 69:7, 70:4, 70:7, 72:5, 90:22, 91:6, 91:16, 91:21, 92:18, 92:25, 93:13, 93:20, 94:2, 94:4, 94:7, 94:12, 94:14, 94:18, 94:21, 95:13, 95:24, 123:14, 129:14</p> <p>personal [2] - 44:4, 123:18</p> <p>persons [3] - 21:7, 24:20, 33:4</p> <p>persuasive [1] - 120:6</p>	<p>pertain [1] - 125:7</p> <p>petty [1] - 50:5</p> <p>photo [36] - 21:17, 22:20, 23:1, 23:8, 23:20, 23:23, 24:18, 25:14, 25:25, 26:5, 27:8, 28:1, 29:19, 30:8, 33:12, 34:20, 74:15, 76:3, 76:5, 76:6, 77:9, 79:11, 88:25, 89:9, 93:21, 94:3, 94:22, 94:23, 95:1, 95:2, 95:12, 95:24, 96:3, 113:15, 116:23, 131:17</p> <p>photocopy [1] - 81:21</p> <p>phrase [2] - 112:21, 112:22</p> <p>pick [1] - 37:22</p> <p>picked [2] - 25:24, 96:12</p> <p>Pickett [6] - 103:2, 103:3, 103:4, 103:10, 103:11, 104:15</p> <p>picking [1] - 75:18</p> <p>picks [3] - 37:18, 37:23, 37:24</p> <p>picture [1] - 52:21</p> <p>pictures [2] - 52:22, 53:24</p> <p>placard [1] - 14:15</p> <p>place [9] - 14:12, 35:8, 49:1, 50:16, 71:18, 100:15, 118:20, 124:20, 125:16</p> <p>placed [1] - 38:17</p> <p>places [3] - 21:6, 21:8, 85:15</p> <p>Plaintiff [2] - 1:4, 1:15</p> <p>Plaintiffs [1] - 106:14</p> <p>plaintiffs [1] - 90:13</p> <p>plan [4] - 118:5, 118:8, 122:24, 129:16</p> <p>plane [1] - 129:25</p> <p>PLATTS [1] - 2:3</p> <p>play [1] - 60:5</p> <p>played [2] - 9:22, 60:9</p> <p>Plaza [1] - 2:24</p> <p>Plessy [5] - 83:3, 83:9, 83:23, 84:14, 84:18</p> <p>point [16] - 22:10, 22:11, 26:18, 42:6, 62:8, 65:1, 65:15, 65:17, 66:7, 68:25, 71:9, 82:17, 89:17, 109:3, 109:12, 114:7</p> <p>pointed [3] - 60:16, 112:5, 112:7</p> <p>points [1] - 40:16</p>	<p>polarization [2] - 56:6, 56:11</p> <p>polarized [9] - 56:2, 60:17, 60:18, 63:11, 64:24, 65:4, 66:1, 102:14, 103:8</p> <p>policies [9] - 43:21, 46:7, 46:11, 54:8, 56:19, 73:17, 115:15, 115:22</p> <p>policy [1] - 7:22</p> <p>Political [1] - 121:6</p> <p>political [16] - 51:9, 55:20, 56:21, 57:7, 66:10, 68:13, 70:12, 73:16, 73:23, 91:22, 94:22, 102:3, 110:15, 115:20, 116:23</p> <p>politicians [5] - 46:6, 115:13, 115:15, 115:21, 116:3</p> <p>politics [2] - 11:13, 54:2</p> <p>Politics [3] - 48:20, 73:6, 74:1</p> <p>poll [20] - 46:13, 48:23, 49:10, 112:2, 112:3, 112:15, 112:17, 113:23, 113:24, 114:6, 114:7, 114:8, 114:14, 114:17, 114:23, 116:14, 120:8</p> <p>polling [1] - 23:9</p> <p>polls [11] - 23:15, 24:14, 25:17, 40:24, 41:1, 112:12, 113:1, 113:4, 113:6, 113:8</p> <p>poor [3] - 49:9, 49:13, 79:14</p> <p>poorer [1] - 61:11</p> <p>Populace [1] - 49:12</p> <p>popular [5] - 46:7, 46:14, 109:23, 113:25, 114:18</p> <p>popularity [1] - 113:22</p> <p>popularly [1] - 65:19</p> <p>populating [1] - 37:20</p> <p>population [7] - 45:15, 55:16, 56:10, 101:2, 101:3, 101:5, 101:9</p> <p>populations [6] - 26:23, 29:20, 30:5, 30:7, 32:10, 45:17</p> <p>portion [3] - 33:7, 84:25, 110:8</p> <p>portions [1] - 20:10</p> <p>posed [1] - 36:18</p>	<p>position [5] - 104:4, 104:7, 104:8, 104:9, 104:14</p> <p>positions [1] - 60:8</p> <p>possess [3] - 44:5, 123:13, 123:20</p> <p>possible [10] - 31:21, 53:5, 66:12, 66:13, 73:16, 75:3, 86:23, 113:14, 113:17, 113:19</p> <p>possibly [1] - 61:22</p> <p>potential [4] - 27:24, 45:12, 62:3, 78:12</p> <p>potentially [2] - 33:18, 34:16</p> <p>poverty [3] - 21:1, 21:2, 33:1</p> <p>power [2] - 65:3, 66:11</p> <p>practice [3] - 41:19, 96:21, 96:25</p> <p>practiced [1] - 6:14</p> <p>practitioner [1] - 35:21</p> <p>precedent [1] - 5:8</p> <p>preclear [1] - 15:8</p> <p>preclearance [1] - 7:25</p> <p>predecessor [1] - 61:17</p> <p>predominantly [1] - 61:9</p> <p>prefer [1] - 104:10</p> <p>preference [1] - 101:3</p> <p>preferred [2] - 102:1, 104:5</p> <p>prerogative [1] - 39:21</p> <p>present [3] - 46:25, 63:16, 125:25</p> <p>presented [11] - 18:21, 26:21, 27:14, 45:3, 70:18, 70:20, 71:4, 76:4, 88:23, 89:14, 121:19</p> <p>presenting [4] - 76:3, 125:6, 126:8, 126:10</p> <p>presents [1] - 115:2</p> <p>preserve [1] - 25:11</p> <p>president [1] - 27:3</p> <p>presidential [1] - 26:25</p> <p>press [3] - 13:6, 96:15, 96:18</p> <p>pressed [1] - 72:7</p> <p>pressing [1] - 88:18</p> <p>presumably [1] - 114:18</p> <p>pretext [2] - 72:25, 73:1</p>	<p>pretextual [3] - 88:4, 88:5, 88:12</p> <p>prettified [1] - 52:21</p> <p>pretty [6] - 34:24, 52:22, 67:4, 107:7, 108:15, 116:8</p> <p>prevent [2] - 26:2, 129:13</p> <p>preventing [2] - 25:5, 25:16</p> <p>previously [2] - 4:5, 111:21</p> <p>primarily [4] - 61:8, 66:9, 68:7, 89:4</p> <p>prime [1] - 63:17</p> <p>Princeton [1] - 2:14</p> <p>printed [1] - 106:22</p> <p>priority [2] - 5:13, 59:22</p> <p>probative [1] - 120:7</p> <p>problem [5] - 9:25, 13:21, 18:23, 72:12, 72:15</p> <p>problems [1] - 30:13</p> <p>procedural [3] - 62:4, 62:10, 63:5</p> <p>procedure [2] - 59:13, 62:12</p> <p>procedures [1] - 54:10</p> <p>proceed [4] - 6:20, 15:19, 19:14, 47:14</p> <p>proceeding [1] - 40:15</p> <p>proceedings [2] - 42:3, 132:12</p> <p>Proceedings [2] - 3:14, 132:6</p> <p>process [25] - 8:2, 8:8, 10:23, 11:10, 12:15, 21:18, 68:13, 70:13, 70:17, 70:19, 70:21, 70:25, 71:1, 71:3, 71:7, 71:14, 71:16, 88:1, 89:20, 90:5, 109:1, 109:21, 118:1, 129:10, 129:12</p> <p>produced [1] - 3:14</p> <p>product [2] - 107:24, 108:12</p> <p>professor [3] - 47:25, 48:8, 48:9</p> <p>Professor [5] - 109:25, 110:7, 111:19, 112:9, 115:1</p> <p>progeny [4] - 82:20, 83:3, 85:12, 86:10</p> <p>program [2] - 60:4, 66:24</p> <p>promise [2] - 78:11, 127:8</p>
------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------	-----------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------	--------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------	---------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------	--------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------

<p>promote [2] - 86:21, 86:25</p> <p>promoted [1] - 96:1</p> <p>promoting [1] - 86:17</p> <p>prong [1] - 65:8</p> <p>prongs [1] - 67:20</p> <p>proof [2] - 124:15, 126:7</p> <p>proponents [8] - 25:15, 26:6, 40:1, 64:5, 68:4, 92:16, 108:18, 116:25</p> <p>proportion [1] - 99:9</p> <p>proposed [4] - 30:14, 59:7, 74:25, 75:6</p> <p>proposition [1] - 92:16</p> <p>prosecute [3] - 69:21, 91:11, 94:10</p> <p>prosecutions [1] - 94:11</p> <p>protect [1] - 65:2</p> <p>protected [3] - 30:11, 32:17, 45:13</p> <p>protective [1] - 14:7</p> <p>proven [1] - 70:7</p> <p>provide [4] - 45:20, 78:12, 97:13, 126:7</p> <p>provided [4] - 5:19, 43:3, 77:23, 78:16</p> <p>providing [1] - 98:13</p> <p>proving [1] - 126:8</p> <p>provision [1] - 50:5</p> <p>provisions [1] - 53:11</p> <p>psychiatrist's [1] - 78:22</p> <p>Public [6] - 6:1, 15:7, 25:19, 27:17, 35:13, 128:1</p> <p>public [37] - 22:6, 22:8, 22:14, 22:23, 22:25, 23:6, 27:23, 33:2, 34:11, 34:13, 36:10, 36:14, 68:9, 77:19, 78:20, 78:21, 87:15, 93:18, 94:2, 94:20, 95:12, 95:23, 96:2, 105:21, 111:22, 112:13, 114:8, 115:3, 115:7, 115:14, 115:22, 116:2, 116:4, 117:16, 120:22</p> <p>publication [1] - 51:20</p> <p>publications [1] - 23:7</p> <p>publicly [1] - 23:4</p> <p>published [3] - 51:22, 83:16, 106:24</p> <p>pull [1] - 64:10</p> <p>pure [1] - 43:10</p>	<p>purpose [20] - 29:25, 50:24, 51:3, 52:23, 60:15, 67:5, 67:6, 67:10, 67:11, 86:20, 86:25, 87:8, 87:24, 88:7, 101:25, 106:11, 109:22, 113:17, 119:15, 119:17</p> <p>purposely [1] - 85:1</p> <p>purposes [13] - 10:18, 17:20, 22:2, 22:13, 52:1, 52:2, 53:16, 87:13, 87:16, 87:19, 88:5, 88:12, 89:19</p> <p>purse [1] - 14:18</p> <p>pursue [1] - 93:5</p> <p>push [1] - 54:5</p> <p>put [24] - 8:6, 12:18, 17:18, 21:4, 33:18, 52:9, 52:12, 52:13, 56:9, 64:5, 68:7, 69:5, 72:15, 81:9, 81:20, 81:21, 90:2, 90:14, 93:18, 96:8, 101:18, 124:3, 125:16, 127:18</p> <p>Putte [1] - 77:14</p> <p>putting [2] - 59:24, 68:5</p>	<p>62:7</p> <p>quote [7] - 68:11, 69:15, 110:5, 111:4, 111:6, 111:8</p>	<p>R</p> <p>race [10] - 29:18, 60:24, 85:17, 87:16, 87:19, 87:24, 88:3, 90:5, 109:18, 110:15</p> <p>racial [27] - 20:19, 43:4, 54:2, 56:6, 56:11, 60:15, 60:25, 65:11, 65:19, 66:11, 66:17, 66:21, 67:15, 73:9, 73:10, 73:19, 73:25, 77:11, 78:13, 79:2, 89:25, 114:3, 114:10, 117:20, 119:7, 120:1, 120:3</p> <p>racially [27] - 48:15, 49:7, 50:7, 56:2, 60:17, 60:18, 63:11, 64:23, 66:1, 67:2, 78:9, 79:23, 79:25, 80:3, 87:8, 87:13, 88:6, 101:24, 102:13, 103:8, 106:5, 106:11, 113:17, 114:4, 117:14, 120:4</p> <p>racing [1] - 42:9</p> <p>racist [1] - 83:11</p> <p>radicals [1] - 85:1</p> <p>Rafael [2] - 19:12, 19:21</p> <p>RAFAEL [1] - 19:16</p> <p>rail [1] - 33:6</p> <p>raise [1] - 6:8</p> <p>raised [3] - 27:21, 28:19, 32:6</p> <p>Ralph [1] - 121:5</p> <p>ran [1] - 71:25</p> <p>ranked [1] - 63:2</p> <p>Rapid [1] - 33:5</p> <p>rapidly [1] - 98:10</p> <p>rare [1] - 23:14</p> <p>rate [3] - 32:25, 33:12, 44:25</p> <p>rates [2] - 21:1, 21:2</p> <p>rather [1] - 63:10</p> <p>rational [1] - 57:4</p> <p>rationales [2] - 72:22, 72:25</p> <p>reach [2] - 66:8, 112:25</p> <p>reached [2] - 50:22, 106:5</p> <p>read [7] - 12:12,</p>	<p>84:25, 86:5, 86:6, 99:14, 99:17, 110:8</p> <p>reading [3] - 29:16, 115:1, 125:20</p> <p>ready [2] - 4:2, 47:16</p> <p>real [4] - 25:22, 25:24, 62:17, 120:21</p> <p>realize [1] - 6:6</p> <p>realized [2] - 23:8, 23:13</p> <p>really [12] - 17:4, 57:23, 58:8, 59:25, 67:7, 75:5, 79:13, 88:6, 109:7, 109:9</p> <p>reason [18] - 13:20, 14:8, 14:9, 14:11, 16:13, 16:21, 27:4, 27:8, 31:22, 62:17, 68:5, 90:3, 105:17, 109:21, 110:2, 118:17, 118:18, 124:8</p> <p>reasons [10] - 34:7, 34:13, 62:21, 62:22, 70:10, 88:4, 89:8, 89:22, 90:6, 109:19</p> <p>Rebecca [2] - 40:11, 132:11</p> <p>REBECCA [1] - 3:11</p> <p>rebuffed [1] - 77:18</p> <p>rebuttal [2] - 107:4, 115:16</p> <p>receive [3] - 33:20, 125:9, 125:25</p> <p>received [2] - 75:25, 97:1</p> <p>receiving [2] - 102:15, 125:8</p> <p>recent [1] - 49:21</p> <p>recently [1] - 38:17</p> <p>Recess [1] - 64:17</p> <p>recitation [1] - 95:13</p> <p>recognize [6] - 52:17, 82:1, 90:20, 93:17, 97:22, 100:7</p> <p>recommitted [1] - 22:12</p> <p>Reconstruction [2] - 55:24, 85:5</p> <p>record [23] - 16:15, 16:16, 16:23, 19:20, 37:5, 48:3, 85:6, 87:15, 90:22, 91:6, 92:1, 97:10, 100:12, 105:3, 106:15, 110:3, 110:4, 110:7, 111:10, 113:20, 122:11, 127:21, 132:12</p> <p>records [5] - 16:12,</p>	<p>16:17, 16:20, 17:20, 120:22</p> <p>redact [1] - 17:10</p> <p>redeem [1] - 85:4</p> <p>redirect [7] - 18:10, 18:11, 18:15, 19:3, 44:10, 117:9, 120:14</p> <p>REDIRECT [4] - 18:19, 44:12, 117:11, 120:19</p> <p>redistricting [14] - 20:17, 49:22, 53:24, 55:15, 56:3, 62:6, 63:10, 63:18, 79:7, 99:21, 100:8, 104:5, 117:25</p> <p>redistrictings [2] - 50:15</p> <p>redrawing [1] - 118:5</p> <p>reduce [1] - 56:19</p> <p>reference [1] - 98:2</p> <p>references [1] - 10:18</p> <p>referenda [1] - 71:24</p> <p>referendum [1] - 71:23</p> <p>referred [1] - 93:19</p> <p>referring [3] - 85:11, 88:14, 88:20</p> <p>refers [2] - 126:14, 128:6</p> <p>reforms [1] - 95:8</p> <p>reframe [2] - 28:15, 76:23</p> <p>refresh [1] - 9:5</p> <p>refused [1] - 28:24</p> <p>regard [4] - 50:22, 75:8, 90:19, 111:13</p> <p>regarding [4] - 75:18, 75:20, 78:12, 99:21</p> <p>regardless [1] - 107:22</p> <p>regime [1] - 34:20</p> <p>Regional [1] - 121:5</p> <p>register [1] - 76:5</p> <p>registered [4] - 44:4, 69:21, 76:3, 122:22</p> <p>registration [6] - 48:23, 49:25, 123:24, 128:18, 130:14, 131:11</p> <p>registrations [1] - 76:2</p> <p>regular [1] - 64:11</p> <p>regulation [3] - 125:13, 126:16, 126:23</p> <p>regulations [4] - 125:7, 125:9, 125:21, 126:7</p> <p>Rehnquist [4] - 82:24,</p>
--------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------	-----------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------	--------------------------------------------------------------------------------	---------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------	----------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------	--------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------

<p>83:17, 84:16, 86:15 rejected [4] - 55:2, 75:7, 75:13, 75:17 rejecting [1] - 58:19 rejection [1] - 75:18 relate [2] - 56:13, 56:15 related [8] - 22:7, 24:18, 29:19, 30:3, 32:16, 45:11, 45:16, 99:21 relates [3] - 42:3, 117:23, 117:25 relating [1] - 96:21 relatively [1] - 79:14 release [2] - 13:6, 96:15 releases [1] - 96:18 relevant [8] - 28:15, 42:5, 59:14, 60:14, 71:20, 74:7, 74:19, 78:24 reliable [1] - 67:1 relied [1] - 118:12 rely [4] - 33:5, 36:14, 45:25, 109:7 remaining [1] - 131:22 remains [4] - 15:1, 15:2, 15:3, 15:4 remarks [5] - 8:7, 8:10, 8:13, 10:4, 11:2 remember [7] - 25:19, 30:23, 40:10, 44:18, 46:8, 103:3, 104:19 remembering [1] - 15:21 renew [1] - 13:20 renewal [1] - 17:21 renewed [4] - 16:18, 16:21, 17:24, 18:3 Reno [5] - 82:20, 82:22, 84:2, 85:11, 86:21 REP [2] - 4:4, 19:16 replaced [1] - 68:15 report [50] - 11:23, 50:20, 63:17, 63:18, 74:24, 75:11, 76:11, 81:3, 86:14, 91:25, 92:1, 92:2, 92:3, 92:4, 92:6, 92:13, 93:24, 94:5, 97:14, 97:21, 97:22, 101:12, 101:17, 101:18, 104:21, 105:12, 105:14, 105:25, 107:4, 108:6, 109:7, 109:25, 111:19,</p>	<p>111:23, 111:24, 112:5, 112:7, 112:9, 112:10, 112:11, 112:13, 115:1, 115:17, 116:16, 117:23, 128:19, 128:20, 128:23, 128:24, 129:1 reported [6] - 3:14, 11:12, 11:14, 13:13, 116:15 REPORTER [2] - 132:9, 132:18 Reporter [2] - 3:11, 3:11 reporter [1] - 7:21 reports [3] - 95:17, 97:9, 107:6 represent [11] - 7:1, 19:10, 20:3, 20:4, 33:14, 34:5, 37:6, 43:16, 102:1, 121:24, 122:1 representative [10] - 20:25, 43:20, 46:10, 46:14, 66:25, 99:16, 102:12, 102:18, 103:16, 103:21 Representative [36] - 4:8, 6:24, 8:19, 9:9, 10:20, 17:18, 18:21, 19:12, 29:12, 30:23, 31:1, 31:10, 32:2, 32:25, 34:6, 35:5, 36:4, 37:12, 38:9, 45:23, 47:4, 57:1, 58:6, 63:21, 70:14, 70:15, 72:9, 99:12, 100:16, 103:1, 103:2, 103:3, 103:4, 103:25, 117:23 Representatives [5] - 41:14, 43:15, 55:23, 59:18, 61:25 representatives [8] - 44:16, 60:19, 63:24, 63:25, 72:8, 102:7, 102:10 represented [2] - 21:7, 102:7 representing [4] - 8:4, 20:21, 47:8, 120:17 represents [1] - 103:4 repressive [1] - 85:2 reprinting [1] - 63:17 Republican [19] - 38:24, 39:10, 39:15, 49:11, 55:21, 55:22, 56:1, 56:7, 56:10, 61:21, 62:1, 65:2,</p>	<p>72:10, 78:7, 97:5, 97:15, 116:3, 116:25, 119:21 Republicans [24] - 56:15, 60:19, 61:19, 61:22, 62:1, 62:15, 62:18, 63:10, 63:12, 63:15, 63:20, 66:10, 66:20, 67:11, 70:22, 71:24, 73:8, 97:19, 108:19, 115:24, 116:9, 117:3, 119:20, 120:25 requested [3] - 30:9, 77:21, 78:12 requesting [1] - 31:5 requests [1] - 7:23 require [1] - 42:9 required [10] - 9:24, 30:4, 45:7, 57:18, 123:14, 125:9, 125:24, 126:6, 126:9, 128:6 requirement [4] - 26:1, 27:9, 110:17, 126:8 requirements [10] - 30:15, 31:13, 33:10, 48:17, 74:9, 74:17, 110:19, 111:7, 125:7 research [1] - 48:18 researching [1] - 65:9 reside [2] - 122:13, 125:15 residency [3] - 124:15, 124:22, 129:5 residents [1] - 21:3 resisted [1] - 66:20 resolution [4] - 42:14, 42:18, 42:19, 42:21 resources [5] - 5:1, 5:21, 7:18, 27:7, 45:23 respect [10] - 30:7, 41:9, 43:2, 77:2, 77:21, 109:8, 111:4, 117:16, 117:20, 119:1 respond [5] - 28:19, 78:5, 115:5, 125:11, 126:11 responded [2] - 26:12, 112:11 responding [1] - 7:22 responds [1] - 111:24 response [7] - 5:5, 28:16, 115:8, 115:9, 117:7, 117:17, 126:13</p>	<p>responsible [1] - 89:4 responsive [1] - 109:23 rest [1] - 120:22 restore [2] - 68:12, 71:2 restraining [1] - 66:5 restrictions [1] - 49:24 restrictive [1] - 79:25 result [5] - 67:13, 71:12, 115:1, 116:24, 118:20 results [2] - 112:22, 113:23 retain [1] - 56:21 retained [1] - 48:11 review [5] - 23:7, 51:20, 120:21, 124:22, 128:15 revision [1] - 121:21 rhetoric [2] - 85:4, 86:17 Richard [2] - 47:5, 47:8 RICHARD [1] - 2:7 rid [1] - 62:12 Rights [3] - 2:8, 30:11, 99:21 rights [3] - 30:10, 34:17, 49:16 RISA [1] - 2:5 Risa [1] - 19:9 rise [1] - 37:21 ROBERT [1] - 1:13 Rodriguez [6] - 121:19, 121:22, 122:2, 122:3, 122:12, 130:22 RODRIGUEZ [1] - 122:7 role [3] - 60:5, 60:9, 121:17 rolls [1] - 69:3 Room [2] - 2:9, 3:12 Rose [1] - 122:12 ROSEMARY [1] - 1:13 ROSENBERG [2] - 2:12, 121:16 Rosenberg [1] - 121:16 roughly [1] - 76:7 row [1] - 132:1 RPR [1] - 3:11 rude [1] - 95:3 rug [1] - 64:10 rule [10] - 57:11, 57:16, 57:17, 58:8, 59:6, 59:9, 96:21, 96:24, 96:25, 97:7 ruled [1] - 107:23</p>	<p>rules [9] - 5:9, 41:21, 41:22, 42:1, 42:14, 42:24, 54:9, 62:16, 62:18 run [5] - 55:15, 62:21, 96:9, 96:11 run-up [1] - 55:15 rung [2] - 21:7, 34:4 rushing [1] - 131:2</p>
S				
<p>safe [1] - 26:5 Safety [6] - 6:1, 15:7, 25:19, 27:18, 35:13, 128:2 sample [1] - 66:25 San [14] - 3:4, 4:9, 7:10, 8:23, 8:24, 10:21, 49:23, 70:8, 77:14, 79:12, 122:14, 122:19, 129:19, 129:22 Sanchez [1] - 121:19 satisfied [1] - 102:18 saving [1] - 34:22 saw [3] - 23:23, 53:24, 111:22 SB14 [70] - 4:20, 7:14, 7:16, 8:2, 8:7, 8:11, 8:15, 8:19, 9:24, 15:8, 26:20, 27:13, 27:20, 27:24, 29:6, 29:13, 29:17, 32:5, 32:23, 34:21, 37:13, 41:10, 43:3, 44:6, 45:7, 46:19, 48:15, 50:23, 55:7, 56:12, 56:14, 56:22, 61:17, 63:7, 63:25, 67:3, 68:3, 68:6, 68:18, 70:11, 71:2, 71:13, 71:15, 74:6, 74:10, 74:14, 74:18, 74:21, 75:12, 75:17, 75:20, 76:6, 77:3, 77:5, 77:22, 78:13, 89:22, 102:8, 102:19, 102:25, 104:18, 106:5, 106:12, 107:7, 108:4, 108:11, 119:17, 120:2, 120:24, 126:20 SB14's [5] - 30:15, 31:12, 33:10, 56:25, 77:19 scale [1] - 5:13 Scalia [5] - 82:24, 83:18, 85:15, 86:12, 86:16</p>				

<p>scenario [3] - 114:23, 114:24, 114:25</p> <p>scenes [3] - 107:25, 108:12, 108:15</p> <p>schedule [1] - 124:13</p> <p>scholar [4] - 65:8, 72:21, 77:20, 79:3</p> <p>scholarly [5] - 23:7, 48:18, 51:8, 65:12, 66:7</p> <p>scholars [2] - 52:2, 54:25</p> <p>school [14] - 38:18, 39:7, 122:17, 122:18, 123:5, 123:7, 128:19, 128:23, 130:2, 130:6, 130:11, 130:13, 131:12, 131:17</p> <p>School [1] - 38:19</p> <p>schools [1] - 61:3</p> <p>schoolteacher [1] - 34:11</p> <p>Science [2] - 121:6, 122:19</p> <p>science [2] - 47:25, 51:9</p> <p>scope [1] - 41:25</p> <p>Scott [5] - 83:4, 83:6, 83:23, 84:18, 125:5</p> <p>SCOTT [1] - 1:23</p> <p>screen [14] - 9:9, 17:19, 52:12, 52:17, 81:9, 81:20, 81:22, 84:19, 88:18, 93:6, 93:7, 100:7, 101:18, 117:24</p> <p>screen-grab [1] - 9:9</p> <p>second [14] - 11:22, 30:20, 50:21, 51:15, 56:23, 64:4, 64:19, 65:16, 68:12, 72:19, 109:3, 111:24, 121:23, 128:21</p> <p>Second [1] - 85:5</p> <p>secondly [1] - 5:11</p> <p>seconds [1] - 9:18</p> <p>secret [1] - 48:23</p> <p>Secretary [15] - 27:18, 29:17, 29:23, 30:3, 40:9, 44:17, 45:20, 46:2, 66:23, 75:10, 76:1, 77:11, 77:15, 78:14</p> <p>Section [6] - 2:8, 50:4, 65:8, 67:20, 125:23, 128:3</p> <p>section [7] - 51:21, 92:9, 92:10, 92:13,</p>	<p>111:24, 127:25</p> <p>secure [1] - 44:15</p> <p>Security [1] - 76:4</p> <p>security [2] - 34:18, 130:2</p> <p>see [54] - 5:18, 6:18, 9:8, 9:10, 9:11, 9:13, 9:14, 10:19, 10:20, 10:24, 11:20, 13:1, 14:4, 14:17, 15:10, 17:13, 35:25, 53:17, 54:9, 62:14, 65:15, 67:21, 85:7, 85:9, 86:3, 86:5, 92:21, 93:9, 98:11, 98:21, 98:23, 100:11, 100:19, 100:25, 101:4, 101:7, 102:14, 106:17, 106:18, 106:24, 106:25, 107:8, 107:19, 107:21, 107:25, 108:13, 108:20, 110:6, 112:25, 115:5, 115:21, 118:7, 121:11, 121:13</p> <p>seeing [1] - 106:21</p> <p>seek [1] - 45:6</p> <p>seem [1] - 64:11</p> <p>segments [1] - 110:21</p> <p>segregated [1] - 29:18</p> <p>segregation [3] - 83:9, 83:21, 84:12</p> <p>Select [3] - 22:2, 38:19, 39:12</p> <p>select [12] - 37:23, 38:16, 38:17, 38:21, 39:3, 39:6, 39:9, 40:7, 44:17, 46:17, 46:18, 46:22</p> <p>self [5] - 53:9, 53:20, 54:3, 54:8, 119:20</p> <p>self-conscious [1] - 53:9</p> <p>self-explanatory [3] - 53:20, 54:3, 54:8</p> <p>self-interest [1] - 119:20</p> <p>SELLS [1] - 2:6</p> <p>Senate [33] - 4:13, 4:22, 5:12, 7:5, 10:14, 11:8, 12:4, 18:22, 22:3, 22:7, 42:14, 42:18, 57:17, 57:21, 57:25, 58:1, 58:3, 59:11, 65:19, 70:1, 71:10, 74:25, 75:23, 77:13, 78:1, 101:21, 123:1,</p>	<p>123:3, 123:14, 124:9, 125:17, 130:18, 131:13</p> <p>senator [1] - 60:9</p> <p>Senator [9] - 58:5, 58:13, 60:11, 60:12, 62:22, 75:10, 75:19, 75:24, 77:14</p> <p>senators [6] - 57:18, 57:19, 58:11, 58:12, 58:13, 59:18</p> <p>senior [2] - 37:25, 123:5</p> <p>seniority [3] - 37:18, 37:21, 37:24</p> <p>seniors [1] - 123:5</p> <p>sense [4] - 10:5, 44:24, 45:1, 97:6</p> <p>sent [1] - 52:21</p> <p>separate [5] - 61:12, 79:3, 79:6, 79:8, 125:21</p> <p>separately [1] - 54:23</p> <p>sequence [1] - 56:24</p> <p>series [1] - 68:21</p> <p>seriously [2] - 28:9, 34:24</p> <p>served [3] - 21:10, 21:16, 49:15</p> <p>service [7] - 5:18, 20:6, 23:21, 33:5, 33:6, 34:13</p> <p>services [1] - 5:18</p> <p>SESSION [2] - 1:6, 1:11</p> <p>session [15] - 21:16, 21:25, 23:22, 25:1, 25:8, 39:11, 42:4, 58:5, 58:14, 58:16, 58:18, 59:20, 60:19, 62:17, 63:4</p> <p>sessions [1] - 23:13</p> <p>set [11] - 6:12, 50:15, 51:23, 51:24, 56:11, 58:21, 73:23, 85:6, 85:8, 89:18, 92:9</p> <p>sets [1] - 52:23</p> <p>setting [1] - 37:23</p> <p>seven [2] - 32:18, 114:6</p> <p>several [1] - 72:8</p> <p>severe [1] - 74:18</p> <p>Shaping [3] - 48:20, 73:6, 74:1</p> <p>shared [2] - 7:13, 7:15</p> <p>Shaw [14] - 82:3, 82:20, 82:22, 83:3, 83:25, 84:2, 84:4, 85:11, 86:9, 86:10, 86:21, 86:25, 111:19</p>	<p>Shaw's [3] - 109:25, 112:9, 115:1</p> <p>sheep [1] - 34:9</p> <p>sheriffs [1] - 69:18</p> <p>shift [2] - 26:8, 100:22</p> <p>shifted [1] - 61:25</p> <p>shifting [2] - 72:21, 72:24</p> <p>short [1] - 90:2</p> <p>shorter [1] - 78:14</p> <p>shorthand [1] - 3:14</p> <p>show [27] - 9:5, 9:18, 10:16, 10:17, 11:16, 16:12, 16:20, 17:5, 17:6, 40:23, 70:20, 75:14, 92:2, 93:15, 97:21, 110:5, 111:19, 111:21, 112:13, 113:2, 113:4, 113:6, 115:7, 130:4, 130:8, 130:10, 130:12</p> <p>showed [2] - 78:3, 130:2</p> <p>showing [3] - 98:19, 98:21, 100:6</p> <p>shown [1] - 117:24</p> <p>shows [5] - 17:24, 57:3, 98:20, 113:24, 118:9</p> <p>SHRIVER [1] - 2:23</p> <p>shut [4] - 11:9, 12:15, 67:4</p> <p>sic [1] - 85:6</p> <p>side [1] - 122:19</p> <p>sides [1] - 12:17</p> <p>sign [1] - 79:25</p> <p>SIGNATURE [1] - 132:18</p> <p>signed [6] - 83:18, 88:23, 89:1, 89:5, 89:6, 89:14</p> <p>significant [5] - 27:6, 33:16, 34:1, 50:12, 50:13</p> <p>similar [6] - 49:12, 53:13, 53:15, 93:23, 111:21, 112:13</p> <p>similarly [1] - 70:8</p> <p>simple [2] - 57:4, 124:2</p> <p>simply [7] - 23:11, 39:7, 45:19, 53:16, 54:23, 57:4, 78:7</p> <p>single [1] - 44:4</p> <p>sister [5] - 123:8, 123:11, 124:2, 130:22, 131:9</p> <p>sit [5] - 22:4, 22:6, 39:19, 39:22, 118:10</p>	<p>site [4] - 4:25, 11:13, 69:1, 96:16</p> <p>sits [1] - 14:10</p> <p>sitting [1] - 43:2</p> <p>situation [3] - 64:23, 65:10, 66:1</p> <p>six [6] - 32:18, 37:25, 54:20, 92:20, 92:24, 93:9</p> <p>six-year-long [3] - 92:20, 92:24, 93:9</p> <p>sizable [1] - 33:7</p> <p>skeptical [1] - 112:19</p> <p>sketch [1] - 85:14</p> <p>skin [1] - 103:20</p> <p>slavery [3] - 83:7, 83:20, 84:11</p> <p>slight [1] - 121:21</p> <p>slightly [2] - 111:8, 111:10</p> <p>small [3] - 24:11, 24:24, 34:22</p> <p>Smith [4] - 98:1, 98:2, 98:8, 121:4</p> <p>so-called [2] - 50:5, 57:16</p> <p>so.. [1] - 36:20</p> <p>social [2] - 47:25, 55:8</p> <p>Social [1] - 76:4</p> <p>society [1] - 18:6</p> <p>socioeconomic [3] - 21:8, 33:13, 34:4</p> <p>sole [2] - 35:21, 124:11</p> <p>soliloquy [1] - 70:16</p> <p>solved [1] - 72:12</p> <p>someone [3] - 12:4, 35:5, 80:11</p> <p>Somerville [1] - 2:16</p> <p>sometime [2] - 15:24, 16:10</p> <p>sometimes [2] - 54:6, 115:18</p> <p>somewhat [1] - 53:15</p> <p>somewhere [1] - 34:1</p> <p>son [2] - 34:7, 34:9</p> <p>sorry [19] - 6:6, 9:1, 18:16, 18:17, 43:8, 44:15, 64:7, 68:22, 80:12, 85:9, 99:2, 105:2, 106:23, 114:1, 118:4, 120:17, 128:9, 128:21, 128:24</p> <p>sort [15] - 5:10, 5:15, 51:24, 52:5, 52:10, 53:6, 57:6, 57:20, 59:17, 65:9, 68:13, 73:10, 79:9, 79:23, 105:3</p>
-----------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------	---------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------	----------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------	-----------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------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<p>sorts [3] - 18:6, 54:5, 61:6</p> <p>sound [2] - 8:24, 88:24</p> <p>source [2] - 51:5, 51:11</p> <p>sources [1] - 51:8</p> <p>Souter's [1] - 89:13</p> <p>South [1] - 73:14</p> <p>south [1] - 122:19</p> <p>Southern [4] - 48:20, 73:6, 74:1, 121:5</p> <p>sovereign [1] - 80:13</p> <p>Spain [1] - 34:9</p> <p>Speaker [1] - 38:22</p> <p>speaker [4] - 37:15, 37:24, 38:24, 39:10</p> <p>speaking [1] - 7:22</p> <p>speaks [1] - 111:6</p> <p>special [2] - 37:13, 37:14</p> <p>specific [6] - 16:4, 23:25, 48:17, 77:21, 95:19, 127:24</p> <p>specifically [6] - 33:14, 39:19, 45:13, 50:23, 69:5, 111:25</p> <p>specified [1] - 69:19</p> <p>speculation [2] - 28:11, 28:13</p> <p>speech [1] - 72:3</p> <p>spell [1] - 47:10</p> <p>Spencer [2] - 80:15, 125:3</p> <p>SPENCER [9] - 1:22, 2:6, 124:24, 125:3, 125:20, 126:4, 127:10, 128:5, 130:24</p> <p>spend [4] - 4:19, 34:24, 84:1, 117:18</p> <p>spent [5] - 27:7, 30:5, 32:8, 32:14, 117:19</p> <p>spoken [1] - 7:5</p> <p>sponsor [10] - 28:24, 32:9, 32:12, 32:15, 32:20, 45:11, 45:22, 58:3, 72:2, 75:24</p> <p>sponsored [2] - 10:10, 11:3</p> <p>sponsors [3] - 71:11, 78:6, 78:7</p> <p>Spring [11] - 98:9, 99:9, 101:14, 101:15, 117:20, 119:8, 119:9, 119:10, 119:11, 119:12</p> <p>St [2] - 122:21, 129:18</p> <p>STACEY [1] - 1:17</p>	<p>stage [2] - 24:16, 56:11</p> <p>stand [3] - 105:5, 113:12, 122:5</p> <p>standard [1] - 51:24</p> <p>standing [1] - 37:20</p> <p>Star [1] - 96:10</p> <p>start [7] - 25:9, 55:5, 71:12, 71:14, 81:19, 86:12, 96:3</p> <p>started [2] - 69:15, 123:10</p> <p>starters [1] - 45:10</p> <p>starting [2] - 29:9, 30:20</p> <p>starts [3] - 53:6, 57:1, 70:6</p> <p>STATE [1] - 1:3</p> <p>state [33] - 17:20, 19:20, 21:4, 21:6, 21:9, 27:6, 35:12, 46:14, 46:15, 53:13, 54:8, 55:11, 55:22, 55:24, 55:25, 58:11, 58:12, 58:13, 60:20, 60:22, 61:19, 61:21, 62:3, 62:5, 65:23, 66:8, 66:11, 66:15, 69:19, 106:3, 122:11, 125:10, 126:8</p> <p>State [24] - 6:15, 7:2, 13:1, 23:5, 24:4, 24:25, 25:20, 29:17, 30:3, 31:9, 32:17, 34:20, 40:9, 42:10, 43:25, 46:1, 46:2, 46:3, 53:10, 75:10, 77:11, 80:20, 91:20, 125:3</p> <p>State's [8] - 27:18, 29:23, 44:17, 45:20, 66:23, 76:1, 77:15, 78:14</p> <p>state's [1] - 116:18</p> <p>statehood [1] - 55:10</p> <p>statement [11] - 9:24, 9:25, 12:3, 13:9, 13:14, 16:5, 40:19, 97:10, 101:11, 110:23, 118:14</p> <p>statements [4] - 13:7, 54:7, 71:19, 78:21</p> <p>states [5] - 48:22, 95:14, 114:6, 114:9, 125:13</p> <p>STATES [3] - 1:1, 1:12, 1:14</p> <p>States [8] - 1:7, 36:9, 47:9, 80:12, 80:14,</p>	<p>80:18, 85:16, 85:20</p> <p>station [2] - 8:23, 9:1</p> <p>stations [1] - 28:1</p> <p>statistical [3] - 49:4, 49:20, 56:4</p> <p>statistics [1] - 76:1</p> <p>Statistics [1] - 35:11</p> <p>status [1] - 33:13</p> <p>statutes [1] - 90:4</p> <p>stayed [1] - 58:22</p> <p>staying [3] - 115:13, 115:21, 130:7</p> <p>stays [1] - 105:8</p> <p>step [2] - 61:13, 110:21</p> <p>Stephanie [1] - 123:6</p> <p>Stephen [1] - 110:9</p> <p>stepping [2] - 115:11, 116:1</p> <p>steps [1] - 5:22</p> <p>Stevens [1] - 90:14</p> <p>STEWART [1] - 2:3</p> <p>still [7] - 14:20, 66:6, 72:10, 74:15, 113:12, 114:6, 118:11</p> <p>stimulate [1] - 93:4</p> <p>Stonestreet [1] - 132:11</p> <p>STONESTREET [1] - 3:11</p> <p>stop [3] - 63:5, 72:1, 109:10</p> <p>stopped [2] - 71:7, 71:13</p> <p>story [3] - 12:14, 85:8, 107:6</p> <p>straight [2] - 85:7, 85:8</p> <p>strands [1] - 105:21</p> <p>strategies [1] - 56:16</p> <p>strategy [1] - 108:18</p> <p>Straus [2] - 38:22, 38:24</p> <p>Street [4] - 1:19, 1:24, 2:16, 3:8</p> <p>strengthening [1] - 40:19</p> <p>strongly [2] - 60:2, 88:24</p> <p>struggle [1] - 57:3</p> <p>struggles [2] - 60:14, 85:3</p> <p>stub [1] - 41:7</p> <p>student [4] - 123:25, 130:15, 131:12, 131:17</p> <p>students [2] - 61:8, 99:5</p> <p>studies [6] - 27:17,</p>	<p>32:16, 45:16, 66:21, 77:8, 77:11</p> <p>study [10] - 29:18, 29:23, 29:25, 30:1, 38:18, 45:21, 45:24, 67:13, 77:15, 77:18</p> <p>studying [2] - 22:20, 39:7</p> <p>stuff [1] - 57:6</p> <p>subcommittee [1] - 24:22</p> <p>subcommittees [1] - 22:17</p> <p>subject [6] - 39:23, 41:16, 41:18, 45:19, 50:11, 64:8</p> <p>subjective [1] - 78:19</p> <p>submit [1] - 51:19</p> <p>Subsection [1] - 125:23</p> <p>subsequent [1] - 23:13</p> <p>substance [1] - 51:4</p> <p>substantially [2] - 56:5, 93:23</p> <p>substantive [1] - 92:5</p> <p>subtle [1] - 23:14</p> <p>succeed [1] - 117:4</p> <p>succeeded [2] - 57:11, 115:19</p> <p>suddenly [1] - 70:24</p> <p>suffer [1] - 129:13</p> <p>sufficient [3] - 41:5, 41:7, 130:3</p> <p>suffrage [1] - 75:16</p> <p>suggest [1] - 110:19</p> <p>suggested [5] - 23:4, 26:6, 27:18, 97:4, 97:7</p> <p>suggesting [1] - 116:14</p> <p>suggests [2] - 31:1, 88:24</p> <p>Suite [6] - 1:24, 2:13, 2:17, 2:20, 3:4, 3:8</p> <p>sum [1] - 131:9</p> <p>summarily [1] - 29:4</p> <p>summarize [1] - 55:5</p> <p>summarizing [1] - 92:5</p> <p>summary [1] - 115:16</p> <p>Supervisors [1] - 50:14</p> <p>support [28] - 12:2, 41:9, 63:7, 91:22, 92:16, 93:21, 94:3, 94:22, 95:12, 95:23, 96:3, 97:1, 98:14, 106:4, 109:19, 110:17, 110:18,</p>	<p>111:22, 112:1, 112:13, 113:3, 114:8, 114:13, 115:14, 115:22, 116:2, 116:4, 116:23</p> <p>supported [5] - 32:22, 43:24, 87:12, 103:17, 112:16</p> <p>supporters [3] - 4:13, 28:19, 32:7</p> <p>supporting [1] - 120:23</p> <p>supportive [3] - 87:20, 87:25, 109:22</p> <p>supports [1] - 114:10</p> <p>suppose [5] - 66:22, 67:1, 67:3, 67:10</p> <p>supposedly [1] - 88:5</p> <p>supposition [1] - 43:10</p> <p>suppression [2] - 10:24, 112:21</p> <p>supremacy [4] - 85:5, 86:18, 86:21, 86:25</p> <p>Supreme [13] - 50:2, 50:8, 52:6, 82:22, 83:7, 83:14, 83:19, 83:20, 89:17, 90:3, 90:20, 91:5, 107:24</p> <p>surge [1] - 61:20</p> <p>surprise [3] - 108:19, 108:23, 110:16</p> <p>surprising [1] - 110:14</p> <p>survey [4] - 66:24, 113:9, 113:10, 114:5</p> <p>surveys [7] - 70:20, 78:3, 111:18, 111:19, 111:20, 113:1, 114:5</p> <p>suspect [1] - 33:3</p> <p>suspended [2] - 59:6, 59:9</p> <p>sustain [1] - 42:7</p> <p>sustained [1] - 22:11</p> <p>Sweeten [1] - 38:5</p> <p>SWEETEN [9] - 1:15, 28:11, 36:17, 38:6, 38:8, 42:2, 42:12, 42:13, 44:8</p> <p>swore [1] - 14:3</p> <p>sworn [6] - 4:5, 15:13, 19:16, 47:18, 86:11, 122:8</p> <p>system [4] - 35:14, 36:10, 39:7, 40:20</p> <p>systematic [1] - 52:10</p>
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<p>T</p> <p>Table [2] - 74:8, 74:24</p> <p>table [2] - 32:3, 88:22</p> <p>tabled [5] - 29:4, 30:18, 31:16, 31:17, 31:23</p> <p>tables [1] - 63:16</p> <p>tape [1] - 34:19</p> <p>Tarrant [2] - 36:12, 36:23</p> <p>TATEL [23] - 1:12, 31:17, 31:19, 31:23, 35:4, 64:19, 64:22, 65:1, 65:7, 65:15, 65:23, 66:4, 67:5, 67:7, 67:10, 67:19, 67:24, 72:19, 72:24, 73:4, 74:3, 128:21, 128:24</p> <p>Tatel [4] - 35:17, 37:5, 76:25, 120:16</p> <p>taught [1] - 34:11</p> <p>tax [9] - 46:13, 49:10, 114:6, 114:7, 114:8, 114:14, 114:17, 114:23, 116:14</p> <p>taxes [2] - 48:23, 113:25</p> <p>Technology [1] - 48:1</p> <p>teleconference [3] - 10:9, 11:3, 15:12</p> <p>Telegram [1] - 96:10</p> <p>television [1] - 8:18</p> <p>tend [1] - 103:23</p> <p>tended [1] - 52:7</p> <p>term [1] - 59:15</p> <p>terms [3] - 4:17, 7:20, 37:15</p> <p>test [4] - 48:25, 102:19, 103:15, 103:21</p> <p>testified [19] - 4:5, 19:17, 32:25, 37:13, 46:6, 47:19, 49:22, 50:1, 50:10, 50:14, 63:6, 69:25, 71:6, 72:5, 79:19, 84:2, 122:8, 130:21</p> <p>testify [3] - 40:1, 41:25, 129:22</p> <p>testifying [3] - 4:8, 64:22, 65:11</p> <p>testimony [25] - 15:13, 15:19, 22:14, 24:22, 25:14, 30:6, 38:15, 41:20, 49:21, 64:15, 72:14, 75:18, 77:25, 81:4, 86:11, 90:7, 91:19, 93:1, 93:2,</p>	<p>95:25, 96:20, 96:22, 105:10, 116:21, 119:15</p> <p>tests [1] - 48:24</p> <p>Texans [5] - 5:19, 70:20, 92:18, 111:22, 114:22</p> <p>Texas [118] - 6:16, 7:2, 10:21, 11:8, 11:17, 11:19, 13:1, 16:12, 16:17, 18:23, 19:11, 19:25, 20:1, 23:5, 24:4, 24:20, 24:25, 25:20, 25:21, 27:11, 30:2, 31:9, 32:11, 32:17, 34:20, 35:11, 35:24, 36:5, 36:8, 37:7, 37:8, 37:19, 41:1, 42:10, 43:25, 44:4, 46:1, 46:13, 46:15, 49:22, 51:9, 53:15, 53:23, 55:10, 56:2, 56:4, 56:18, 57:21, 60:16, 62:24, 63:10, 63:18, 65:24, 66:16, 69:1, 69:21, 76:2, 79:7, 80:12, 80:17, 80:20, 87:7, 87:11, 87:12, 87:16, 87:20, 87:25, 89:22, 90:6, 91:15, 91:20, 97:2, 97:19, 98:21, 99:20, 99:25, 101:20, 106:10, 107:21, 108:10, 108:20, 109:22, 111:18, 112:14, 113:1, 113:3, 113:15, 114:7, 116:2, 116:9, 116:22, 117:18, 117:20, 118:3, 118:5, 118:24, 119:8, 119:14, 122:14, 122:22, 123:9, 123:16, 123:18, 124:1, 124:21, 125:4, 125:6, 125:14, 125:15, 125:21, 125:22, 128:6, 128:18, 129:11, 131:24, 131:25, 132:1</p> <p>TEXAS [2] - 1:3, 1:18</p> <p>text [3] - 53:21, 74:6</p> <p>texts [1] - 74:9</p> <p>THE [36] - 1:2, 1:12, 1:13, 1:13, 1:18, 6:6, 15:17, 18:16, 19:4,</p>	<p>31:18, 31:21, 32:1, 35:9, 44:9, 47:2, 48:4, 64:16, 64:25, 65:6, 65:14, 65:16, 66:3, 66:13, 67:6, 67:8, 67:16, 67:23, 72:23, 73:3, 73:5, 76:13, 119:12, 121:11, 128:23, 131:18, 131:20</p> <p>theme [1] - 91:25</p> <p>themselves [2] - 74:23, 104:23</p> <p>theoretical [1] - 113:18</p> <p>theory [3] - 115:12, 115:21, 115:23</p> <p>therefore [2] - 26:16, 64:8</p> <p>they've [1] - 116:13</p> <p>thinking [1] - 104:22</p> <p>third [2] - 57:19, 57:22</p> <p>thirds [8] - 57:17, 57:18, 58:4, 59:6, 59:9, 62:2, 62:7, 62:16</p> <p>Thomas [3] - 82:24, 83:18, 86:16</p> <p>thoughts [1] - 7:13</p> <p>threaten [1] - 62:22</p> <p>threatened [1] - 58:6</p> <p>three [5] - 49:13, 56:9, 58:22, 75:22, 105:23</p> <p>throughout [1] - 46:15</p> <p>tied [1] - 102:4</p> <p>tight [1] - 82:5</p> <p>timekeeper [1] - 64:12</p> <p>Title [1] - 128:1</p> <p>title [1] - 107:8</p> <p>titled [1] - 125:23</p> <p>today [13] - 7:5, 8:10, 28:3, 34:14, 38:15, 99:20, 101:19, 104:25, 105:11, 118:10, 121:3, 130:14, 130:21</p> <p>Todd [1] - 98:2</p> <p>together [3] - 56:10, 86:6, 109:18</p> <p>Tom [1] - 62:6</p> <p>tomorrow [2] - 131:3, 131:24</p> <p>took [13] - 15:25, 25:13, 26:24, 31:4, 38:11, 49:1, 50:16, 55:22, 69:3, 71:17, 93:4, 99:11, 107:4</p> <p>topic [2] - 109:17, 127:9</p> <p>topmost [1] - 37:25</p>	<p>Torres [2] - 41:17</p> <p>totally [1] - 67:11</p> <p>towards [5] - 7:18, 7:25, 26:9, 63:4, 74:24</p> <p>track [1] - 76:23</p> <p>train [2] - 33:19, 130:4</p> <p>transcript [7] - 3:14, 17:9, 128:19, 128:20, 128:23, 129:1, 132:12</p> <p>TRANSCRIPT [1] - 1:11</p> <p>transcription [1] - 3:15</p> <p>Transit [1] - 33:5</p> <p>transplant [1] - 58:14</p> <p>transportation [3] - 33:2, 36:10, 36:14</p> <p>traveled [1] - 129:21</p> <p>Travis [1] - 79:11</p> <p>Trey [1] - 10:21</p> <p>TREY [1] - 4:4</p> <p>trial [9] - 6:16, 42:7, 42:8, 53:24, 56:3, 63:11, 64:12, 127:5, 129:22</p> <p>Trial [1] - 93:16</p> <p>TRIAL [1] - 1:11</p> <p>Tribune [2] - 11:17, 11:19</p> <p>tried [7] - 34:24, 51:23, 52:9, 73:13, 79:6, 88:11, 104:9</p> <p>tries [1] - 75:1</p> <p>triggered [1] - 79:2</p> <p>trip [1] - 35:7</p> <p>trouble [1] - 80:17</p> <p>true [8] - 36:8, 36:15, 40:19, 40:22, 53:18, 67:18, 96:4, 104:2</p> <p>truly [1] - 28:21</p> <p>trust [1] - 99:5</p> <p>truth [2] - 5:8, 107:17</p> <p>try [10] - 12:11, 33:20, 43:18, 53:5, 56:19, 65:22, 66:18, 67:24, 115:6, 116:17</p> <p>trying [12] - 44:24, 52:2, 52:25, 53:3, 54:14, 74:20, 74:21, 91:20, 95:3, 95:23, 106:9, 131:4</p> <p>Tuesday [1] - 1:6</p> <p>Tuesdays [1] - 6:2</p> <p>turn [7] - 50:21, 68:3, 69:11, 87:6, 88:22, 91:9, 92:10</p> <p>turned [1] - 69:11</p> <p>turning [1] - 46:17</p>	<p>turnout [7] - 26:14, 26:17, 26:23, 27:1, 27:4, 27:8, 27:10</p> <p>turns [1] - 46:16</p> <p>TV [8] - 8:23, 9:1, 9:23, 13:10, 13:25, 15:11, 16:18, 71:25</p> <p>twin [2] - 123:8, 130:22</p> <p>two [32] - 4:23, 13:23, 41:3, 55:19, 56:15, 56:22, 57:7, 57:17, 57:18, 58:4, 59:6, 59:9, 61:12, 61:25, 62:2, 62:7, 62:16, 67:20, 68:7, 69:4, 83:14, 88:22, 89:14, 89:22, 109:18, 120:13, 121:4, 126:19, 129:4, 131:22, 132:1</p> <p>two-thirds [8] - 57:17, 57:18, 58:4, 59:6, 59:9, 62:2, 62:7, 62:16</p> <p>TX [3] - 1:20, 2:21, 3:4</p> <p>type [3] - 23:8, 45:24, 51:11</p> <p>types [3] - 23:3, 32:21, 51:5</p> <p>typically [4] - 22:5, 37:19, 45:25, 52:8</p>
				<p>U</p> <p>U.S [7] - 2:7, 3:12, 52:6, 82:22, 83:19, 83:20, 123:21</p> <p>ultimate [1] - 92:5</p> <p>unable [1] - 45:2</p> <p>unanimous [1] - 97:1</p> <p>unanimously [1] - 63:8</p> <p>unanswered [1] - 32:21</p> <p>unaware [1] - 45:16</p> <p>unconstitutional [1] - 46:16</p> <p>uncover [3] - 75:20, 92:19, 120:23</p> <p>under [18] - 9:24, 11:8, 12:4, 14:3, 15:22, 20:17, 30:11, 31:6, 41:1, 59:21, 64:11, 75:25, 76:6, 77:10, 82:4, 125:23, 130:18, 131:13</p> <p>underlying [6] - 29:21, 31:7, 33:17, 33:24, 48:16, 124:17</p> <p>undermine [5] - 92:16,</p>

<p>102:8, 102:20, 103:23, 104:2</p> <p>undermined [1] - 71:18</p> <p>understood [1] - 55:15</p> <p>underwood [1] - 50:3</p> <p>undocumented [1] - 24:20</p> <p>unexpected [1] - 34:2</p> <p>unfamiliar [1] - 129:12</p> <p>UNION [1] - 3:7</p> <p>union [1] - 55:12</p> <p>UNITED [3] - 1:1, 1:12, 1:14</p> <p>United [8] - 1:7, 36:9, 47:9, 80:12, 80:14, 80:18, 85:16, 85:20</p> <p>University [2] - 122:21, 129:18</p> <p>unparalleled [1] - 92:18</p> <p>unreliable [1] - 55:2</p> <p>up [51] - 4:16, 5:11, 5:17, 6:12, 10:19, 15:23, 25:15, 25:24, 27:2, 27:4, 27:8, 28:20, 29:3, 32:18, 37:23, 40:23, 42:2, 42:4, 52:12, 52:13, 55:15, 58:4, 58:21, 59:4, 59:21, 59:24, 60:3, 63:3, 72:18, 75:18, 81:20, 86:24, 91:22, 94:22, 95:5, 96:12, 100:2, 100:5, 100:6, 101:15, 101:16, 102:4, 115:14, 115:22, 116:4, 117:7, 117:21, 121:23, 131:6, 131:9</p> <p>updates [1] - 5:1</p> <p>upheld [1] - 89:18</p> <p>uploaded [1] - 9:13</p> <p>upset [1] - 14:24</p> <p>urban [1] - 36:9</p> <p>Uresti [1] - 60:12</p> <p>utility [2] - 41:2, 41:5</p> <p>utilize [1] - 41:2</p>	<p>value [3] - 80:1, 120:7</p> <p>van [1] - 33:5</p> <p>Van [1] - 77:14</p> <p>VAP [1] - 101:5</p> <p>varied [1] - 112:1</p> <p>various [5] - 93:22, 96:9, 99:25, 100:9, 116:16</p> <p>vast [1] - 60:21</p> <p>vehicle [2] - 14:15, 73:16</p> <p>verbiage [1] - 42:8</p> <p>Vestal [1] - 122:14</p> <p>vettid [1] - 108:20</p> <p>viable [1] - 73:16</p> <p>Victoria [4] - 121:19, 122:12, 127:16, 131:24</p> <p>VICTORIA [1] - 122:7</p> <p>video [1] - 10:3</p> <p>Videotape [1] - 9:22</p> <p>view [4] - 40:16, 66:7, 89:18, 98:16</p> <p>visibility [2] - 92:20, 93:9</p> <p>visible [1] - 91:16</p> <p>Vital [1] - 35:11</p> <p>volunteer [1] - 123:11</p> <p>vote [19] - 31:4, 32:23, 34:22, 41:2, 41:7, 44:6, 46:18, 61:5, 62:16, 63:22, 71:12, 75:4, 90:14, 119:23, 122:24, 123:14, 130:14, 130:18</p> <p>Vote [2] - 4:24, 111:5</p> <p>vote-saving [1] - 34:22</p> <p>voted [24] - 32:5, 41:10, 41:15, 42:17, 42:21, 42:24, 42:25, 58:3, 62:14, 63:8, 63:19, 63:24, 69:8, 87:12, 101:20, 102:7, 102:19, 102:24, 104:18, 108:5, 119:16, 119:17, 120:1</p> <p>voter [110] - 4:21, 4:24, 10:10, 10:24, 11:8, 12:8, 12:13, 18:23, 21:15, 21:24, 22:17, 22:20, 22:21, 22:22, 23:2, 23:3, 23:4, 23:9, 23:11, 23:13, 23:15, 23:24, 24:3, 24:5, 24:8, 24:11, 24:15, 24:18, 25:11, 25:16, 26:8, 26:11, 26:12, 26:16,</p>	<p>26:21, 27:10, 39:1, 41:9, 43:23, 44:4, 57:2, 57:5, 59:6, 59:8, 59:11, 63:1, 69:15, 70:4, 70:7, 71:25, 72:1, 72:7, 87:6, 88:11, 89:18, 90:16, 90:22, 91:6, 91:16, 91:21, 92:17, 92:18, 92:25, 93:13, 93:20, 94:3, 94:4, 94:7, 94:12, 94:14, 94:18, 94:21, 95:12, 95:13, 95:19, 95:24, 105:24, 106:3, 108:18, 109:20, 110:19, 111:7, 111:22, 112:13, 112:16, 112:21, 112:22, 113:15, 113:22, 114:23, 115:12, 115:20, 116:2, 116:4, 116:8, 116:14, 116:19, 116:23, 116:25, 117:14, 117:17, 122:22, 123:24, 128:18, 130:14, 131:11</p> <p>Voter [15] - 39:13, 58:24, 59:1, 70:1, 87:7, 87:12, 87:17, 87:20, 87:25, 91:22, 97:19, 98:5, 107:21, 108:10, 109:22</p> <p>voters [24] - 7:6, 11:24, 27:21, 32:7, 43:24, 63:19, 69:21, 75:12, 77:5, 77:22, 77:25, 88:7, 88:13, 89:1, 102:4, 102:5, 103:17, 104:6, 110:18, 113:1, 115:16, 115:23</p> <p>votes [9] - 25:5, 25:6, 56:7, 56:8, 56:9, 63:9, 101:23, 102:3, 102:15</p> <p>Voting [4] - 2:8, 30:11, 69:13, 99:21</p> <p>voting [45] - 10:23, 22:14, 24:19, 24:20, 24:23, 25:3, 25:10, 30:10, 34:16, 43:20, 48:17, 49:16, 49:25, 56:20, 61:7, 63:11, 64:24, 65:4, 66:1, 66:5, 66:6, 68:11, 68:18, 69:3, 71:8, 71:13, 71:15, 71:23,</p>	<p>72:1, 72:4, 72:7, 72:11, 93:4, 93:5, 94:9, 94:11, 101:2, 101:5, 101:8, 102:14, 103:8, 129:10, 129:14</p> <p>vs [3] - 84:2, 84:4</p> <p>vulnerable [1] - 119:22</p>	<p>White [1] - 41:15</p> <p>whites [6] - 49:9, 49:13, 55:18, 60:21, 110:16, 110:19</p> <p>whole [3] - 10:3, 84:2, 84:3</p> <p>Whole [3] - 70:1, 75:23, 78:1</p> <p>wholly [1] - 110:21</p> <p>widely [4] - 5:3, 49:6, 49:7, 55:15</p> <p>widespread [3] - 68:8, 68:10, 72:3</p> <p>wife [1] - 50:6</p> <p>Wikipedia [3] - 99:5, 99:10, 101:15</p> <p>WILKINS [4] - 1:13, 100:12, 127:21, 127:24</p> <p>WILLIAM [1] - 1:16</p> <p>willing [2] - 60:3, 105:5</p> <p>win [2] - 73:17, 121:3</p> <p>winner [1] - 121:4</p> <p>winning [1] - 70:22</p> <p>wipe [1] - 85:2</p> <p>wish [1] - 80:9</p> <p>withdrawn [1] - 76:18</p> <p>WITNESS [28] - 18:16, 19:4, 31:18, 31:21, 32:1, 35:9, 47:2, 48:4, 64:16, 64:25, 65:6, 65:14, 65:16, 66:3, 66:13, 67:6, 67:8, 67:16, 67:23, 72:23, 73:3, 73:5, 76:13, 119:12, 121:11, 128:23, 131:18, 131:20</p> <p>witness [19] - 4:4, 15:15, 19:6, 19:16, 42:10, 47:18, 48:11, 49:15, 50:11, 64:20, 72:11, 80:9, 100:20, 110:12, 121:15, 121:18, 122:7, 130:25</p> <p>witnesses [7] - 39:16, 39:25, 42:5, 46:25, 56:3, 78:2, 78:11</p> <p>won [1] - 121:4</p> <p>wondered [1] - 25:25</p> <p>woops [1] - 46:25</p> <p>word [1] - 102:10</p> <p>words [4] - 4:18, 86:23, 88:7, 107:24</p> <p>works [2] - 37:19, 124:10</p> <p>worried [1] - 31:20</p> <p>worry [1] - 113:23</p>
<p>V</p>				
<p>VA [1] - 2:17</p> <p>valid [6] - 26:1, 33:12, 89:19, 90:4, 90:21, 91:5</p> <p>validity [2] - 95:18, 120:8</p> <p>validly [1] - 25:5</p>				

worst ^[1] - 83:14
worth ^[1] - 39:8
Worth ^[1] - 96:10
wow ^[2] - 118:2,
 131:25
wrap ^[1] - 72:18
wrap-up ^[1] - 72:18
writing ^[2] - 48:18,
 127:12
wrongly ^[2] - 90:8,
 90:18
wrote ^[6] - 81:5, 83:5,
 84:9, 84:12, 84:15,
 84:18

Y

year ^[8] - 10:8, 11:4,
 26:24, 92:20, 92:24,
 93:9, 123:5, 129:17
year's ^[1] - 10:23
years ^[4] - 13:22,
 13:23, 63:13, 85:2
York ^[2] - 2:24, 2:25
yourself ^[11] - 9:9,
 12:7, 12:9, 19:8,
 37:4, 38:15, 40:4,
 45:7, 45:24, 47:24,
 74:16
YouTube ^[1] - 9:8